SUPREME COURT, U. S.
Supreme Court
FILE
AUG 5
MICHAEL RODAK, JR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

74-74

No. .....

RONSON CORPORATION,

Petitioner,

v.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS, S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JULIUS B. POPPINGA
Attorney for Petitioner
550 Broad Street
Newark, New Jersey 07102

McCARTER & ENGLISH
Of Counsel

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutory Provisions Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
A. The Federal Questions Herein Have Not Previously Been Determined by This Court	6
B. The Federal Questions Herein Should Be Settled by This Court	6
(1) Repeated Violation of the Williams Act Requires Sanctions	7
(2) Questions of Discovery	9
(3) Questions of Proof	10
Conclusion	12

Table of Cases

Corenco Corp. v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973)	8

PAGE

STATUTES

The Williams Act

15 U.S.C. §§78m(d) and (e); 78n(d), (e) and (f) (1970) 2, 3, 5, 6, 7, 8, 10, 11

28 U.S.C. §1254(1) 2

OTHER AUTHORITIES

H.R. 8951, 93d Cong., 1st Sess. (1973) 6

H.R. 11,265, 93d Cong., 1st Sess. (1973) 6

H.R. 11,335, 93d Cong., 1st Sess. (1973) 6

S. 2840, 93d Cong., 1st Sess. (1973) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

RONSON CORPORATION,

Petitioner,

v.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS, S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner Ronson Corporation prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Third Circuit, entered in this proceeding on April 19, 1974.

Opinions Below

The opinion of the Court of Appeals here in issue has not yet been reported. It appears as Appendix E to this Petition. An earlier opinion of the Court of Appeals, entered in this case on July 24, 1973, is reported at 483 F.2d 846, and appears as Appendix B hereto.

Jurisdiction

The judgment of the Court of Appeals (Appendix E, *infra*) was dated and entered on April 19, 1974. A timely petition for rehearing was denied on May 7, 1974 (Appendix F). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

A European syndicate ostensibly headed by Raffaele Ursini, a business associate of Michele Sindona, is trying to take over an American corporation by making a cash tender offer to its stockholders. The Williams Act requires *inter alia*, disclosure of the identity of the offeror and the source of its funds. The questions presented are:

1. Whether such an offeror, having made a series of disclosures found to be false and misleading, may nevertheless repeatedly amend and reamend its disclosures, continue the tender offer at its pleasure and retain the fruits of it.

2. Whether a court is justified in truncating discovery as to who is behind the offeror, when disclosure thereof is the purpose of the Williams Act.

3. Whether a court, particularly after forbidding discovery into such issues as control of the offeror and source of funds for the offer, is justified in making the opponents of the offer carry the burden of proving the falsity of the offeror's statements, even as to information solely within the knowledge and control of the offeror.

Statutory Provisions Involved

This case involves that part of the Securities Exchange Act of 1934 which is commonly known as the Williams Act, 15 U.S.C. §78m(d) and (e); §78n(d), (e), and (f) (1970). These sections are reprinted as Appendix G.

Statement of the Case

The Williams Act requires anyone seeking to buy blocks of stock through a cash tender offer to disclose certain facts, particularly the identity of the persons on whose behalf the offer is made (i.e. who controls the offeror) and the source of the funds for the cash tender offer, 15 U.S.C. §78n(d) and §78m(d)(1)(A) and (B).

Liquifin Aktiengesellschaft ("Liquifin") made such an offer on June 4, 1973, for the purchase of a controlling interest in Ronson Corporation, a New Jersey corporation ("Petitioner"). This offer (among other defects) did not adequately disclose the identity of those in control of the offeror nor the source of the funds. Therefore Petitioner brought an action in the United States District Court for the District of New Jersey, seeking a preliminary and permanent injunction against the offer. Jurisdiction lay under the Securities Exchange Act of 1934.

There followed a long and involved course of litigation. Petitioner was able to establish by discovery conducted in June 1973 that the original offer and an amendment of June 13, 1973, failed to comply with the Williams Act. A preliminary injunction was ordered by the district court on July 5, 1973.

Thereafter Liquifin repeatedly amended its offer and repeatedly applied to the district court to vacate the preliminary injunction. The district court (on August 15, 1973, September 26, 1973, and December 5, 1973) repeatedly denied Liquifin's applications. Liquifin's appeal to the Third Circuit on the July 5, 1973 order was similarly denied (Appendix B).

Meanwhile Petitioner was seeking to conduct discovery to determine who was behind Liquifin and where the money for the tender offer was coming from. Liquifin persistently frustrated discovery: it destroyed crucial documents; it refused to produce others; it claimed non-existent privileges. On September 26, 1973, October 12, 1973, and October 25, 1973, Liquifin obtained orders from the district court by which the court in an inexplicable change in attitude toward the litigation sharply limited the persons and the topics on which discovery was allowed. On December 5, 1973, the court again denied specific, limited requests for discovery.

Respondents conceded that behind Liquifin (a Liechtenstein shell corporation) was Liquigas, S.p.A. ("Liquigas", an Italian corporation), which wholly owned Liquifin, and that behind Liquigas was Raffaele Ursini ("Ursini"). However, behind Ursini Respondents erected a stone wall. Petitioner was not permitted to investigate beyond him although no explanation was given or offered as to how a middle-rank business executive could amass a fortune of $20,000,000 to $30,000,000 to buy a controlling interest in Liquigas. Petitioner was not allowed discovery of other major interests in Liquigas, and not allowed to ask Ursini certain questions, that, if truthfully answered, might have

proved that he, in turn, was acting for undisclosed principals.

On January 2, 3 and 4, 1974, the district court held a hearing on the permanent injunction. Liquifin offered no oral testimony. The court placed on Petitioner the burden of proving that Liquifin's disclosures were inadequate under the Williams Act. Petitioner was thus required to prove who was really behind Liquigas even though those with knowledge of the facts were beyond the reach of subpoenas, or protected by the district court's discovery orders, or both.

Following the hearing in early January, the district court vacated its preliminary injunction on January 16, 1974, and denied permanent relief. The tender offer was allowed to continue on the basis of a Restated Offer to Purchase, which was the fifth amendment to the original form of the offer.

Petitioner appealed to the Third Circuit. Pending the appeal, petitioner also applied for a stay of the tender offer, which was denied by the district court, by the Third Circuit and by Mr. Justice Brennan of this Court. On April 19, 1974, the Third Circuit affirmed the district court in a *per curiam* opinion that expresses no reasons for its holding other than a bare conclusion that the district court's rulings disclosed no error.

Certiorari is sought to review the order of the Third Circuit and to settle questions arising under the Williams Act that have never been determined by this Court.

Reasons for Granting the Writ

The Third Circuit has decided important questions of federal law that have not been, but should be, settled by this Court; and has decided them in a way that conflicts with the decisions of other circuits on the same matter.

A. *The Federal Questions Herein Have Not Previously Been Determined by This Court*

The Williams Act was approved on July 29, 1968, by Pub. L. No. 90-439, 82 Stat. 454.

The basic questions in this case (the problem of appropriate sanctions for repeated disclosure shortcomings, and the problem of burden of proof in private enforcement of the Williams Act) have never come before this Court, nor has this Court ever decided any Williams Act case. Although cases involving tender offers prior to the Williams Act have been decided by this Court, the specific provisions and purposes of the Williams Act have never been reviewed here.

B. *The Federal Questions Herein Should Be Settled by This Court*

Takeover bids have long been a matter of grave public concern. Lately, the danger of such bids by foreign citizens has been increasingly realized. Congress is even now considering legislation to restrict foreign investment in the United States.*

---

* Note the pending "Foreign Investors Limitation Act", H.R. 8951, 93d Cong., 1st Sess. (1973); identical with H.R. 11,265, 93d Cong., 1st Sess. (1973); and H.R. 11,335, 93d Cong., 1st Sess. (1973), which warn of "dangers to the domestic control of our own industry", and which would restrict persons who are not

The Williams Act is the first line of defense against the corporate raider. However, as applied by the decisions below, that defense has now been breached. Foreign takeover bids will actually be favored. Foreign offerors, having no history of S.E.C. filings, operating beyond the reach of regular court process, and behind the screen of foreign corporate shells, will be encouraged to buy into American industry on minimal disclosures, with little to fear beyond costs of litigation and printing of repeated amendments of their offer while wearing down the target company.

An American corporation has a record here, with reports on file at State and Federal levels. Its officers are here and can be readily questioned in English. Foreign corporations have no similar record here. They can apparently disclose as little as they wish, frustrate discovery by the interposition of interpreters, claim foreign business secrecy laws, and destroy evidence outright pursuant to "business practices" foreign to our shores. They can then in effect defy anyone to prove the contrary of what is set forth in their tender offer, and if their disclosures are proved false or misleading, they need merely amend and carry on.

(1) Repeated Violation of the Williams Act Requires Sanctions

Other cases (none in this Court) have dealt with offers where substantial misstatements or omissions were made. None heretofore has involved a *series* of misstatements or

---

citizens of the United States, or who are controlled by non citizens of the United States, from acquiring more than 5% of the voting securities (or 35% of the non-voting securities) of any issuer registered under the Securities Exchange Act of 1934. And see S.2840, 93d Cong., 1st Sess. (1973), which would authorize the Secretary of Commerce to investigate and report on the impact of foreign investment in the United States.

omissions, where an offeror was *repeatedly* found in violation of the Williams Act. There have been no other cases where an offeror was *regularly* allowed to amend or where the misstatement or omission was knowingly made, and still the offeror was allowed to proceed.

This is a unique case, with important consequences for the securities market, domestic industry and the U. S. investing public. The Third Circuit has held, in effect, that so long as an offeror publishes *at last* a statement that *cannot be proved* false, it does not matter how many false statements were made along the way, nor that the offeror had sole control of and access to the salient facts.

The Second Circuit, in *Corenco Corp.* v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973), indicated (as dictum) that a permanent injunction, and a cooling-off period, might be an appropriate sanction for an intentional failure to disclose pertinent financial information. However in that case, involving only *one* amendment, the failure to disclose financial data was excusable since it was a case of first impression. The offerer was allowed to amend.

The *Corenco* case, however, pointed the way to a holding that a willful misstatement, even on only one occasion, will justify the permanent injunction of a tender offer.

The district court and the Third Circuit were put off by Liquifin's bland assertions of innocence, truth and veracity. However it should be noted that the Securities and Exchange Commission by its order of May 31, 1974, has initiated an investigation of Liquifin's statements in materials filed with respect to the tender offer, and also with respect to its recent proxy contest for control of Ronson. A copy of this order is annexed as Appendix H.

(2) Questions of Discovery

The opponents of a tender offer must be allowed thorough discovery. The offeror is required to disclose its indentity, the source of its funds, and its plans, but what it alleges cannot be tested without questioning those who control the offeror. They alone know who they are, where their money comes from, and what they plan.

Although the Third Circuit stated that "broad discovery *must be granted* in this type of case to compensate for the lack of available data subject to the subpoena powers of the court" (emphasis added), unaccountably, the Third Circuit ignored its own stricture, finding, in so many words, no error in the district court's rulings.

Discovery in the present case was severely curtailed. Except for a brief flurry of depositions in June 1973, directed solely to proving the falsity of Liquifin's earliest disclosures (held false and misleading by the district court on July 3, 1973), the district court narrowly circumscribed Petitioner's right to take depositions. Petitioner was required to list all persons it wished to depose and to state what it hoped to develop from each. The district court denied depositions of most of the persons so listed, and significantly limited the areas of inquiry in those few depositions that were allowed. Thus while Liquifin was freely permitted to amend its disclosures, Petitioner was denied the right to test the amendments and probe the issue of control upstream.*

---

* For example, Liquigas was requested on June 19, 1973, to produce the stock certificates purportedly giving Ursini control of Liquigas. These certificates (4,000 certificates representing some 90,000,000 shares of Liquigas) were simply destroyed by burning them on June 27, 1973. Petitioner did not learn that these certifi-

As a result, Ronson was effectively denied its day in court before it got there. Clearly private enforcement of the Williams Act was crippled. A very bad precedent has been set and should not stand.

(3) Questions of Proof

The opponents of a tender offer, as plaintiffs under the Williams Act, have the initial task of challenging the truth and completeness of information disclosed by the offeror. However, as previously stated, much of the evidence as to such disclosures is known only to the offeror. Where the offeror is an alien corporation, this problem is intensified.

Accordingly the question arises whether, at some point, the Williams Act does not in effect require the offeror to

---

cates had been destroyed until December 24, 1973, after the district court had forbidden any further discovery.

Ursini, whose income in 1967 was but $11,000, refused to answer where he obtained some $17,000,000 to purchase part of his holding of Liquigas stock in 1973, other than to concede it was not from his wife nor from a rich uncle. After his counsel advised Ursini not to answer further questions as to how he obtained the monies to purchase Liquigas stock, application was made to the District Court for an order compelling answers. The District Court denied the application.

The source of Ursini's funds remains a mystery. Petitioner Ronson is not the only party unwilling to accept Liquifin's assertion that Ursini is the one ultimately in control. The S.E.C., in a letter dated June 4, 1974, and which was marked as a court exhibit after being referred to by counsel for Liquifin in proxy violation litigation now pending in the Southern District of New York (and a copy of which is annexed as Appendix I) advised Mr. Ursini that the S.E.C. had "serious questions as to whether or not Mr. Sindona is a 'participant' . . . in the proxy solicitation of Ronson shareholders and as to the source of Liquifin's funds for its tender offer ended May 10, 1974." That letter further advises Mr. Ursini that his counsel, Mudge, Rose, Guthrie & Alexander, rather than furnish supporting data requested by the S.E.C. staff as to these issues, elected to proceed at peril without obtaining S.E.C. clearance of the statements made on these subjects.

prove the truth of his representations, rather than requiring the adversary to prove the contrary.

The Third Circuit acknowledged that, in a Williams Act case involving an alien offeror, "in some circumstances the burden of going forward with the evidence may shift so as to make it necessary that the principal controlling individual of a foreign entity making the tender offer should be called to testify in person before the trial court." The Third Circuit should have, but unfortunately did not, apply this precept to the present case.

The burden of proof in the present case was imposed upon Petitioner throughout. Petitioner was required to prove the insufficiency of the offeror's disclosures without being permitted to conduct full discovery.

Private enforcement of the Williams Act has been undermined by the Third Circuit decision. The required disclosures evidently need be only minimal. When an alien offeror can hedge itself about with protective orders to prevent anyone from learning the truth about its operations, and then compel its adversary to prove in what respects the offeror's disclosures were inadequate, the inevitable result will be avoidance of disclosure.

The burden of proof under the Williams Act should reflect the legislative mandate for the disclosure of pertinent information. A result that would encourage disclosure, rather than reward nondisclosure, should be preferred.

CONCLUSION

For the reasons stated above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: August 5, 1974

JULIUS B. POPPINGA
Attorney for Petitioner
550 Broad Street
Newark, New Jersey 07102

McCARTER & ENGLISH
Of Counsel

APPENDICES

APPENDIX A

Findings of Fact and Conclusions of Law; United States District Court, District of New Jersey, Dated July 3, 1973

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil 785-73

RONSON CORPORATION,

Plaintiff,

v.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS, S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Defendants.

TRENTON, NEW JERSEY

Tuesday, July 3, 1973

BEFORE: THE HONORABLE CLARKSON S. FISHER, USDJ

[NO APPEARANCES]

[In chambers.]

The Court: This is an application for a preliminary injunction brought by the plaintiff, Ronson Corporation

(hereinafter "Ronson") against a multitude of defendants, including most importantly Liquifin Aktiengesellschaft, (hereinafter "Liquifin") and Liquigas, S.p.A. The other defendants are depository banks, and the three individuals whose names kept being mentioned throughout the convoluted financial transactions which are described hereafter.

The complaint was precipitated by a filing of a tender offer with the Commissioner of the Security Exchange Commission pursuant to Rule 14d-1 of Regulation 14D of the General Rules of Regulations under the Security Exchange Act of 1934.

This was filed May 31, 1973 by Liquigas, S.p.A., and Liquifin.

Also on this date the public announcement of the tender offer was made to the general public through financial publications and newspapers of general circulation.

On June 5, 1973, this Court signed a temporary restraining order, the argument of which was finally heard on June 25 and June 26, 1973.

On June 5th, 1973, the Court further ordered a schedule of discovery which was immediately instituted by both parties up to the day of the hearings.

Following the signing of the temporary restraining order, the key defendants extended the tender offer to July 6, 1973, and significantly at the same time and on the same date, June 13, 1973, filed an amendment entitled "Amendment Number I" to the Schedule 13D Statement previously filed with the Security Exchange Commission. Again, the amendment and the extension were publicized.

Since the filing of the complaint, this Court has of necessity reviewed literally thousands of pages of depositions, interrogatories and affidavits which both parties to their

credit moved expeditiously. Counsel for both sides are commended by this Court for the manner in which they have handled a complex and difficult situation necessitated by the time elements involved. Therefore, the Court is dictating this decision rather than filing a formal opinion.

Ronson asserts numerous misrepresentations and omissions of material facts in Liquifin's tender offer which, it is alleged, violates Section n14e of the Securities and Exchange Act of 1934. 15 U.S.C., Section 78n(e). Ronson claims these misrepresentations and omissions occurred in the tender offer and the Schedule 13D statements filed pursuant to Rule 14d-1 of the General Rules and Regulations promulgated under the Securities and Exchange Act of 1934. 17 C.F.R., Sec. 240.14d-1. *See also* Section 13(d) and 14(d) of the 1934 Act, 15 U.S.C., Section 78m(d) and 78n(d). Ronson contends that these statutes and regulations were violated when defendants (1) failed to disclose adequately or misrepresented the source of funds used to pay for the tendered shares; (2) failed to disclose the control persons of Liquifin and Liquigas; (3) failed to disclose foreign governmental interests and legal controls which would materially affect the defendants' ability to consummate the tender offer and effectively manage the business of the Ronson Corporation; (4) failed to disclose or misrepresented a host of administrative legal problems including but not limited to possible antitrust violations, violations of the Federal Communications Act of 1934, 47 U.S.C., Sec. 310, the Federal Aviation Act of 1958, 49 U.S.C., Sec. 1301 *et seq.,* and U. S. Department of Defense Regulations, D.O.D. Directive 5220.22 and Industrial Security Manual Section III, para. 21, which concern facility security clearances now held by Ronson subsidiaries engaged in defense contract work.

Sections 13(d) and 14(d) and (e) are part of the 1968 amendments to the Securities and Exchange Act of 1934. They were enacted by Congress to deal with the increasing use of cash tender offers used by individuals and corporation efforts to gain control of other corporations. These amendments, commonly known as the Williams Act, were needed to provide investors, who held equity interests in public corporations, material information with respect to the potential impact of any effort to acquire control of a company. Congress believed that investors needed sufficient time within which to make an unhurried investment decision as to whether to dispose of or retain their securities. *Cattlemen's Investment Company* v. *Fears,* 343 F. Supp. 1248, 1251 (W. D. Okl. 1972). By requiring certain filings and the disclosure of truthful information, Congress intended to protect stockholders so that in tender offer situations involving a change in corporate control, stockholders could properly evaluate the tender offer. Disclosure which is false or misleading subverts the Congressional purpose. Often a false or materially misleading filing may be more detrimental to the informed operation of securities markets than no filing at all. *G.A.F. Corporation* v. *Milstein,* 453 F.2d 709, 720 (2d Cir. 1971) *Cert. denied,* 406 U.S. 910 (1972). The Rules and Regulations of the Securities Exchange Commission require the filing of detailed information in any tender offer situation such as the identity and background of persons on whose behalf the purchases are being made; the source and amount of funds to be used and description of financing arrangements; the purposes of the purchase, and if one such purpose is to acquire control as in the instant case, a description of plans or proposals relating to any major changes in the company; and any contracts, arrangements or understanding with respect to any of the

securities to be acquired. *Cattlemen's, supra* at 1251. All filings and information regarding the tender offer must be truthful, contain all material facts, and be free of material misrepresentations under these statutes and regulations heretofore cited.

It is clear that the Congressional purpose behind the remedial Williams Act was to protect the investing public and therefore must be construed broadly and liberally to effectuate the legislative purpose and intent. *Cattlemen's, supra* at 1251.

At this time the Court must determine only whether plaintiff Ronson has carried its burden of demonstrating either a combination of probable success on the merits and the possibility of irreparable injury *or* that plaintiff has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for further litigation and deliberation. Plaintiff must also show that the balance of equities sharply weighs in its favor. *Gulf & Western Industries, Inc.* v. *The Great Atlantic & Pacific Tea Company, Inc.*, No. 73-1223, Slip Op. at 2247-48 (2d Cir. March 12, 1973) citing *Stark* v. *New York Stock Exchange*, 466 F.2d 743, 744 (2d Cir. 1972); *General Host Corp.* v. *Triumph American, Inc.*, No. 73 Civ. 1144 (S.D.N.Y. April 2, 1973); *Water & Wall Associates, Inc.*, Civ. No. 99-73 at 19 (unpublished opinion and order) (D.N.J. April 19, 1973).

Given the need for swift decision on plaintiff's application, the Court will grant relief if Ronson has borne these burdens on at least one of the issues raised. *General Host, supra.* The Court is most concerned with plaintiff's allegations that defendants have failed to disclose adequately or materially misrepresented the persons behind and methods used to fund the offer; the foreign controls involved in the offer; and the administrative obstacles to the offer under federal Law.

These allegations are based upon Section 14(e) which tracks the language of Rule 10b-5, 17 C.F.R. Sec. 240 10b-5 (1972), except that Section 14(e) applies to tender offers and Rule 10b-5 applies to the purchase or sale of securities. The elements of an action for injunctive relief are essentially the same under Section 14(e) and Rule 10b-5. Under both, the determinative question is: Was the omission or misrepresentation of fact material? A material fact is that which a reasonable investor would consider important in the making of his decision to tender or not to tender in response to Liquifin's offer. *General Host, supra; Gulf & Western, supra* at 2255-56; cf. *Affiliated Ute Citizens* v. *United States,* 406 U.S. 128, 153-54 (1972). A material misrepresentation occurs when there is a substantial likelihood that the misstatement may have led a stockholder to tender his stock; whereas in the absence of the misrepresentation he would not have tendered. *Nicholson File Company* v. *H. K. Porter Company,* 341 F.Supp. 508, 521 (D.R.I. 1972).

In determining whether Ronson is entitled to preliminary injunctive relief, this Court must balance the equities. To permit the tender offer to go forward could have serious detrimental effects on Ronson and possibly its employees. It is possible that if the defendants are unable to overcome the administrative obstacles, the corporation, under the management of defendants, could be forced to divest subsidiaries as a direct result of failure to obtain administrative approval of its voting trust plans. If the tender offer were consummated and these violations of administrative law were charged against Ronson, it would be virtually impossible for this Court to unravel the situation and restore the current position of Ronson. *Gulf & Western, supra; Water & Wall, supra.*

The Court is aware that the purpose of the Williams Act is not to give Ronson's incumbent management a tool to fight off unwelcome tender offers solely to preserve management's corporate life nor to frustrate stockholders from reaching an informed investment decision. *Nicholson File, supra* at 520; *Butler Aviation Int'l., Inc.* v. *Comprehensive Designers, Inc.*, 425 F.2d 842, 845 (2d Cir. 1970). However, the accomplishment of these legislative purposes presupposes that stockholders and the investing public have been fully and fairly informed of all the material facts. The defendants have no right to proceed if their tender is unlawful. As stated by the Court of Appeals for the Second Circuit: ". . . [A] requirement of lawfulness is included by implication in every tender offer." *Gulf & Western, supra.*

Defendants urge that preliminary injunctive relief should be denied because they have the right to invest in target corporations for the benefit of their own stockholders at such time as they deem ripe and profitable. The Court has considered this factor in defendants' favor. However, where the "investment" ostensibly raises strong and serious doubts as to its legality, the defendants would have no right to proceed. Moreover, defendants have not made any showing of irreparable harm. They assert that if preliminary injunctive relief is granted, the investment world, for all practical purposes, will consider the tender offer terminated. Judge Timbers, in his excellent opinion in *Gulf & Western, supra,* demonstrated the fallacy of this argument by saying if the defendants prevail after a trial on the merits, they will not be foreclosed from renewing their tender offer. Indeed, even if they do not prevail, there is nothing in the Williams Act to prevent resolicitation of these shares with full and fair disclosure of all material facts.

Thus, the balance of equities clearly favors the plaintiff.

Defendants' alleged failure to disclose material facts with respect to the "control" persons of Liquigas and the sources of funds for the tender offer is the thrust of plaintiff's claim under Section 14(e) of the 1934 S.E.C. Act. Defendants' response to these allegations is that Liquigas is merely acting through its subsidiaries much like any large American corporation; that Mr. Ursini is the only person who may be "deemed in control of" Liquigas; that the funds arrived in this country through "normal banking" channels; and that all material facts have been fully and fairly disclosed to the Ronson stockholders by defendants.

The offer to purchase (Ex. A attached to complaint) of May 31, 1973 revealed that Liquifin's parent, Liquigas, S.p.A., an Italian corporation would supply the funds for the purchase from its "general working capital" to Liquifin, a wholly-owned Liechtenstein subsidiary which conducts no material business ventures. The tender offer stated that Liquigas' managing director, Raffaele Ursini, "may be deemed to be in control" of Liquigas, and that the depository for the funds would be the Franklin National Bank of New York, a wholly-owned subsidiary of the Franklin New York Corporation. Defendant Michele Sindona owns 21.6 percent of Franklin New York's stock.

Nearly two weeks later, after this Court had entered the temporary restraining order, defendants amended their offer by a notice of extension dated June 13, 1973 (Ex. 3, Keale's affidavit). In the amended offer, defendants admitted that the funds did not originate from the general working capital of Liquigas but that the working capital "included" $20,600,000 as a result of the sale by Liquimportex Aktiengesellschaft, a wholly-owned Liechtenstein subsidiary of Liquigas to Capitalfin International Limited,

in May, 1973, of a minority interest in a wholly-owned subsidiary of Liquimportex. The proceeds of the sale were deposited in the Franklin National Bank to the account of Liquifin. Raffaele Ursini was still deemed in control of Liquigas.

Plaintiff contends that an injunction should issue in view of defendants' admission that the original tender offer was not sufficient under Section 14(e). Plaintiff argues that the amended offer and Rule 14d-1 amendments of June 13, 1973 are admissions of Section 14(e) violations. Plaintiff's prayer for relief on this ground is without merit because case law has established that the courts should consider any curative steps taken by defendants to remedy any misinformation provided to the stockholders. *Nicholson File Company, supra* at 521. In fact, the Court of Appeals for the Second Circuit has suggested that if, in a tender offer situation, any required filings are not accurate, there is a "continuing obligation" on the offerors to promptly amend its filings. *Milstein, supra* at 720-21. Therefore, in order to determine whether defendants have violated Section 14(e), the Court must evaluate the truthfulness and accuracy of all the relevant information provided to the Ronson stockholders.

Plaintiff claims that defendants' attempt to characterize Mr. Ursini as the only person in control of Liquigas is misleading. Ronson believes that the following are "control persons" within the applicable Securities laws: (1) Montecatini Edison, S.p.A., an Italian company owning approximately 25 percent of the outstanding stock of Liquigas; (2) Servizio Italia of Banca Nazionale del Lavoro, an Italian statutory fiduciary company holding approximately 36 percent of the common stock of Liquigas for the benefit of Ursini; (3) Societa Generale Immobiliare, an Italian

company which holds Liquigas' guarantees of approximately $80 million of Manifattura Ceramica Pozzi, S.p.A. debts to Immobiliare; and (4) defendant Michele Sindona, the sole owner of Fasco Internaticnal Holding S.A., a Swiss holding company which owns a 21.6 percent interest in defendant Franklin New York Corporation as well as approximately 40 percent of Immobiliare. Ronson also names at least ten other entities which it considers to be possible control persons.

The disputed point of law is whether under the applicable federal securities statutes, rules and regulations, there can be more than cne "control person" of the offeror, Liquifin. Both sides concede that there is no previous case directly on point. The parties have attempted to persuade the Court of the validity of their respective positions through a battle by "expert" affidavits.

Defendant contends that control is an exclusionary concept; that is, there can be only one person or corporate entity which has the power, directly or indirectly, to actually direct the management and policies of a corporation. *See* 17 C.F.R. Sec. 240.12b-2(f). On the other hand, plaintiff argues that a person may be a "controlling person" by virtue of stock ownership, agency, agreement or through some other means and that there could be controlling groups of a corporation, each member of the group being a separate control person. *See, e.g.*, 78 U.S.C. Sec. 77o.

While both definitions have merit, under the peculiar circumstances of this case and considering the Congressional purpo:e behind the Williams Act, the Court is more inclined to accept plaintiff's view that more than one person could be in control of a corporation. In this case, even if Ursini is the sole control person of Liquigas, there are material facts that, if omitted as has been the case here, would create

a misleading description of Ursini's control. Also, many of these facts developed through discovery relate to the source of funds question because, in the Court's view, these facts would affect a stockholder's choice to tender his shares especially in light of the involvement of foreign entities unfamiliar with the problems of managing a large American corporation such as Ronson. At every stage of discovery, more and more facts developed the control relationships and intricate maneuvering of funds through international shell corporations resulting in a labyrinthinic maze which is barely comprehensible to this Court.

As best as can be discerned from this dazzling array of financially interrelated entities the key facts discovered to date is best summarized by referring to Plaintiff's Exhibit 1-c.

Certainly a material fact would be the $80 million guaranty by Liquigas of the debts of Pozzi to Immobiliare as described previously. The evidence also reveals that Liquigas is in the midst of negotiating for the acquisition of Pozzi. In view of these facts surrounding the guarantees, plaintiff could very well prove at trial that Immobiliare could be deemed in control of Liquigas. Similarly, Mr. Sindona might well be a person in a position to control the policies of Liquigas through his control of Immobiliare by way of the Fasco International Holding S.A.

Another stunning display of international high financial wizardry is the series of sales of the stock of Liquipar, a Brazilian holding company, in March and April of 1973. Liquifin began to invest in Liquipar, so that by 1973, Liquifin owned almost 83 percent of Liquipar. Even though Liquifin claimed in the offer that it never engaged in any business, it invested in Liquipar which makes that representation inaccurate. The offeror, Liquifin, then sold its

Liquipar shares to Liquimportex for approximately $1.2 million. Then Liquimportex sold 49 percent of the Liquipar shares to Capitalfin for $20 million, the same $20 million now on deposit to pay for the tendered shares. None of these facts were fully revealed to the stockholders. While defendants claim that the cash is available "free and clear" and thus there is no need to let the stockholders know how it got there, the Ronson stockholders have a right to know the specific steps involved in obtaining the "source of the funds" used to pay for the tendered shares.

Other serious questions of disclosure arise in the Montecatini Edison-ENI-Italian bank link and possible controls of Liquifin's stock involved, and the Servizio-Banca del Lavoro-Capitalfin link. In this Court's mind some of these mysteries must be delved into for the benefit of the Ronson stockholders so that they might make an intelligent investment decision.

While defendants assert that their policy is to let the shareholders "know everything," they have obviously failed to follow this policy as more and more facts develop the control relationships and funding involved in this tender offer. It is apparent that plaintiff has met its burden of proof under Section 14(e) and is entitled to preliminary injunctive relief on the previous grounds asserted.

Plaintiff has also urged strenuously that the impact of foreign tax law upon foreign corporations' interests and individuals could very well seriously affect the operations of Ronson Corporation, most seriously the tax situation and the possible penalties for noncompliance.

In view of the foregoing and in the interest of time, this Court need not go into that aspect in any great deal, but it should be inquired deeply into on the application for a permanent injunction. The same applies to the allegations

raised as to the impact of the applications by the new directorship for licenses under the Civil Aeronautics Act and the Federal Communications Act. In fact, it is not beyond the realm of possibility that defense contracts may be lost and subsidiaries forced to close down as a result of a possible refusal of licensing due to the foreign interests involved.

This Court need not decide nor at this point is it any of this Court's business to determine whether or not certain voting trust applications are valid or invalid. That is a determination properly delegated by Congress to the individual administrative agencies. However, the fact that these applications were characterized in their offer by defendants as routine matters, in the Court's view, is certainly misleading to the Ronson stockholders. It appears that these matters raise very substantial questions of administrative law.

Ronson's fifth claim in its complaint charges that completion of the tender offer by Liquifin will violate Section 1 of the Sherman Act, 15 U.S.C. Sec. 1, Section 7 of the Clayton Act, 15 U.S.C. Sec. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. Sec. 45.

Again, in view of what has previously been held here, this Court need not determine these questions but feels that the parties are entitled to the Court's view of the evidence and pleadings as they now stand.

In its pleadings, Ronson listed all of its products and those of Liquigas in an attempt to demonstrate similar lines of commerce.

However, no facts have been submitted on the record to characterize these products as "lines of commerce" within the meaning of Section 7 of the Clayton Act. *United States* v. *Brown Shoe Co.*, 370 U.S. 294, 325-26 (1962). No evidence has been presented as to Ronson's share, the concentration

or the existence of entry barriers in any relevant market. The evidence shows only that Liquigas "intends" to do some "business" in the Western Hemisphere.

In view of the absence on this record of any specific evidence defining relevant markets, indicating the precise position in such markets held by both the offeror and the target corporation, or delineating the degree of concentration in such markets by all competitors so as to enable this Court to assess the actual or probable anticompetitive effects of the proposed acquisition, plaintiff is not entitled to injunctive relief based upon these conclusory allegations of market foreclosure and anti-competitiveness. *See Lunkenheimer* v. *Condec Corp.*, 268 F. Supp. 667, 671 (S.D.N.Y. 1967). There are few, if any, specific facts regarding the lines of commerce, the relevant geographic areas, the relevant market characteristics, or the market positions of Ronson or Liquigas to support a finding of probable success on the merits of any anticompetitiveness, vertical or horizontal market foreclosure, or reciprocal dealing claims. Perhaps at a later stage of these proceedings, plaintiff may be better prepared to substantiate its antitrust claims, but at this juncture, it is not entitled to preliminary injunctive relief on these grounds.

This Court must dispose of one more factor in this decision.

Defendant Franklin National Bank, depository of the tendered shares, moves for a severance and transfer to the Eastern District of New York or a dismissal. Franklin's principal place of business is in the Eastern District of New York.

Franklin New York Corporation moves to dismiss alleging that it is named as a defendant only because of its relationship to Franklin Bank, and plaintiff asserts no independent claim against it.

Franklin bottoms its motion upon 12 U.S.C., Sec. 94, which provides in substance that a national bank may be sued in a federal court only in the district in which the bank is established.

Plaintiff contends that the bank has waived its immunity under 12 U.S.C. Sec. 94 by complying with a direction of this Court to produce documents and acceding to a time-table for depositions.

Plaintiff also argues that the Franklin Corporation should be retained in this action because it was charged in the complaint with participation in an alleged conspiracy against all of the defendants.

The participation to which plaintiff alludes is apparently based on the fact that defendant Sindona owns a considerable stock interest in Franklin New York, and Franklin New York wholly owns and controls the Franklin Bank.

It is undisputed that 12 U.S.C. Sec. 94 generally immunizes national banks from suit outside their home districts where, as here, immunity is timely asserted and not waived. *Mercantile Nat'l. Bank* v. *Langdeau,* 371 U.S. 555, 561-2 (1962); *Michigan Nat'l Bank* v. *Robertson,* 372 U.S. 591 (1963); *Helco, Inc.* v. *First Nat'l. City Bank,* 470 F.2d 883 (3rd Cir. 1972); *U.S. Nat'l Bank* v. *Hill,* 434 F.2d 1019 (9th Cir. 1970); *Bruns, Nordeman & Co.* v. *American Nat'l Bank & Trust Co.,* 394 F.2d 300 (2d Cir. 1968).

Franklin is "established" in the Eastern District of New York because that is the location of its principal place of business. *U.S. Nat'l Bank* v. *Hill, supra; Buffum* v. *Chase Nat'l Bank of City of New York,* 192 F.2d 58 (7th Cir. 1951), *cert. denied,* 342 U.S. 944 (1951). Scheduling depositions and complying with this Court's Order to produce the letters of transmittal to avoid being held in contempt did not constitute a waiver under 12 U.S.C. Sec. 94, and this

Court so held during the hearing on June 26, 1973 (transcript at 66).

These facts notwithstanding, the federal circuit courts are split as to the applicability of 12 U.S.C. Sec. 94 venue immunity to securities suits. The Second and Ninth Circuits conclude that Sec. 94's immunity supersedes the venue provisions of the Securities Acts of 1933, 15 U.S.C. Sec. 77a *et seq.*, and 1934, 15 U.S.C. Sec. 78a *et seq., Bruns, Nordeman & Co., supra; U.S. Nat'l Bank, supra,* the former Circuit making its holding with "regret", 394 F.2d at 301, and the latter saying that while the alternative might be desirable, any change in policy must be made by Congress, 434 F.2d at 1020-21. The Third Circuit holds *contra,* that 15 U.S.C. "Sec. 78aa impliedly repeals (12 U.S.C.) Sec. 94 for cases involving Securities Exchange Act violations by national banks." *Levin* v. *Great Western Sugar Co.,* 274 F. Supp. 974, 978 (D.N.J. 1967), *aff'd.* 406 F.2d 1112 (3rd Cir. 1969), *cert. denied,* 396 U.S. 848 (1969). *See also, Carpenter* v. *Hall,* 352 F.Supp. 806 (S.D. Tex., 1972). Sec. 78aa is the 1934 Act's liberal venue provision. Hence, venue is properly laid in the District of New Jersey as to defendant Franklin.

Franklin New York's motion for dismissal for lack of a cause of action or for improper venue should be and is denied. Plaintiff alleged that Franklin New York participated in the conspiracy to violate the antitrust laws and the securities acts and performed ministerial functions in furtherance of the overall conspiracy. See Complaint, paragraphs 8, 9 and 15. These allegations are sufficient to avoid dismissal and to lay venue in the District of New Jersey. *Levin* v. *Great Western Sugar Co., Supra,* at 978; *Knuth* v. *Erie-Crawford Dairy Coop. Ass'n,* 395 F.2d 420, 423 (3rd Cir. 1968).

In *Levin, supra,* Judge Coolahan stated that:

"... any allegation of a securities act violation is sufficient for venue purposes even as to a defendant who did not commit an act within the district if that defendant is in league with a defendant who did act within the district." 274 F.Supp. at 978.

Franklin New York is clearly "in league" with defendant Sindona (who acted within the district by participating in the tender offer), since defendant Sindona owns 21.6 percent of Franklin of New York and, taking plaintiff's allegations as true for the purpose of this motion, controls Franklin of New York as well. This Court has jurisdiction over Franklin of New York and venue is adequately laid here.

The Franklin Bank and Franklin of New York finally contend that they need not be joined as defendants in order to afford plaintiff injunctive protection and relief because they are so bound by the provisions of F.R., Federal Civil Procedure Rule 65(d) anyway. They may be technically correct because rule 65(d) binds:

"... parties to the action, their officers, *agents,* servants, employees, and attorneys, and ... those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." [Emphasis supplied].

Both the bank and Franklin of New York assert in their brief that they are agents of the other defendants because they hold the tendered shares, and they admit that they are bound by this Court's Orders of June 5, 1973 and June 7, 1973 for the same reason. The Franklin Bank and Franklin New York also assert, without specifying facts in support of their assertion, that retaining them as parties defendant

is damaging them without helping plaintiff. These undeveloped arguments neither impress the Court nor provided a compelling basis for dismissal. This Court has discretion to keep parties in this suit who might otherwise be bound by Rule 65(d); and at this stage of the proceedings, keeping Franklin New York in as a party defendant seems to be the wiser course.

Franklin's motion for severance and transfer to the Eastern District of New York is hereby denied.

All of the foregoing constitutes the Court's findings of fact and conclusions of law pursuant to Rule 52(a) Federal Rules of Civil Procedure.

An Order granting preliminary injunction will be submitted *instanter*. Costs will be abide the outcome of the application for permanent injunction.

Appendix B

Per Curiam Opinion, United States Court of Appeals for the Third Circuit, Filed July 24, 1973 (483 F.2d 846)

UNITED STATES COURT OF APPEALS

THIRD CIRCUIT

Argued July 20, 1973 Decided July 24, 1973

Nos. 73-1587, 73-1606

RONSON CORPORATION

v.

LIQUIFIN AKTIENGESELLSCHAFT,

Appellants in No. 73-1587, et al.

Appeal of FRANKLIN NATIONAL BANK and FRANKLIN NEW YORK CORPORATION in No. 73-1606

Appeals from order of the United States District Court for the District of New Jersey, Clarkson S. Fisher, J., enjoining defendants from soliciting tender of any shares of a corporation's common stock pursuant to offer to purchase, from acquiring or attempting to acquire in any manner any shares of such corporation, and from voting any shares previously acquired. The Court of Appeals held that conclusions that plaintiff had met its burden of proof under statute prohibiting any fraudulent, deceptive, or

manipulative acts or practices in connection with any tender offer and was entitled to preliminary injunction did not constitute reversible error; and that defendants should apply to district court, rather than Court of Appeals, for any reconsideration of preliminary injunction in light of supplemental information which was not available to district court prior to its order.

Order affirmed, and case remanded with directions.

See also, 3 Cir., 483 F.2d 852.

Carpenter, Bennett & Morrissey, Newark, N. J., Mudge, Rose, Guthrie & Alexander, New York City, for Liquifin Aktiengesellschaft, Liquigas S.p.A., D. F. King & Co., Inc., Servizio Italia of Banca Nazionale del Lavoro, Philip Marfuggi, Raffaele Ursini, and Michele Sindona, appellants in No. 73-1587.

Garrett E. Brown, Jr., Stryker, Tams & Dill, Newark, N. J., Cravath, Swaine & Moore, New York City, for Kuhn, Loeb & Co., Inc., appellant in No. 73-1587.

Hannoch, Weisman, Stern & Besser, Newark, N. J., Kaye, Scholer, Fierman, Hays & Handler, New York City, for Franklin National Bank and Franklin New York Corp., appellants in No. 73-1606.

Schapira, Steiner & Walder, Newark, N. J., Holtzmann, Wise & Shepard, New York City, Wald, Harkrader & Ross, Washington, D. C., for Ronson Corp., appellee in Nos. 73-1587 and 73-1606.

Before VAN DUSEN and WEIS, Circuit Judges.

PER CURIAM:

These appeals challenge a preliminary injunction issued by the district court on July 5, 1973, enjoining and restraining the defendants, and those acting on their behalf or in concert with them, from (a) soliciting the tender of any shares of Ronson common stock pursuant to the OFFER TO PURCHASE of Liquifin Aktiengesellschaft (Liquifin), "as heretofore or hereafter modified or extended," (b) acquiring or attempting to acquire in any manner any shares of Ronson, and (c) voting any shares of Ronson previously acquired, etc.[1] This order was supported by a 26½ page opinion, containing findings of fact and conclusions of law,

---

[1] The first paragraph of the decree provisions of the July 5, 1973, order provides:

> "ORDERED that defendants and each of them, their agents, servants, employees, and all persons acting on their behalf or in concert with them, are during the pendency of this action and until a trial on the merits shall have been had enjoined and restrained from (a) soliciting the tender of any shares of Ronson common stock to Liquifin pursuant to Liquifin's 'Offer to Purchase', as heretofore or hereafter modified or extended; (b) acquiring or attempting to acquire in any manner any shares of Ronson; and (c) voting any shares of Ronson previously acquired, or otherwise utilizing any share of such stock or shares of Ronson stock previously acquired, as a means of controlling or affecting the management of Ronson; . . . ."

On the same day, the district court, by separate order, denied defendants' application for a stay pending appeal, except insofar as the above-mentioned order granted a stay as to certain of its provisions for a ten-day period.

A panel of this court, consisting of Judges Gibbons and Hunter, denied a Motion For Stay of the July 5 preliminary injunction by order of July 12, which order prescribed an expedited briefing schedule and argument of the appeal (No. 73-1587) on July 20, with provision that the Motion For Stay also be argued on July 20.

dictated by the district judge on July 3, 1973, and filed July 5, 1973.[2] Liquifin is a Liechtenstein company and is a wholly owned subsidiary of Liquigas S.p.A. (Liquigas), which is a large Italian industrial company.

The complaint was filed as the result of a tender offer[3] by Liquifin to buy Ronson common stock at $8.50 per share, publicly announced through newspapers, including financial publications, and filed with the SEC on May 31, 1973. The district court entered a temporary restraining order and directed expedited discovery on June 5. The background of the tender offer and the various companies

---

[2] Appellee's brief at page 4 states that the preliminary injunction was "orally granted" on July 3.

[3] Section 14(e) of the Securities Exchange Act of 1934, as added by the Williams Act (P.L. 90-439, as amended by P.L. 91-567), 15 U.S.C. § 78n(e), provides:

> "(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative."

See also 15 U.S.C. § 78n(d); SEC Rule 14(d)(1). The Supreme Court has stated that the securities acts should not be construed technically and restrictively but "flexibly to effectuate [their] remedial purpose." SEC v. Capital Gains Research Bureau, 375 U.S. 180, 195, 84 S.Ct. 275, 11 L.Ed.2d 237 (1963). The desire of Congress to provide adequate disclosure to investors where cash tender offers are made is summarized and documented in Dyer v. Eastern Trust and Banking Company, 336 F.Supp. 890, 907-908 (D. Maine 1971), as well as the cases cited in the district court opinion (see 9a ff.).

and individuals involved are described in the district court opinion and need not be repeated here. The district court stated, at pages 12a-13a, 15a-16a, 18a-19a and 20a-21a of its opinion:[4]

> "The Court is most concerned with plaintiff's allegations that defendants have failed to disclose adequately or materially misrepresented the persons behind and methods used to fund the offer; the foreign controls involved in the offer; and the administrative obstacles to the offer under federal law.
>
> "These allegations are based upon Section 14(e) which tracks the language of Rule 10b-5, 17 C.F.R., Sec. 240 10b-5 (1972), except that Section 14(e) applies to tender offers and Rule 10b-5 applies to the purchase or sale of securities. The elements of an action for injunctive relief are essentially the same under Section 14(e) and Rule 10b-5. Under both the determinative question is: Was the omission or misrepresentation of fact material? A material fact is that which a reasonable investor would consider important in the making of his decision to tender or not to tender in response to Liquifin's offer. [Citing cases.] A material misrepresentation occurs when there is a substantial likelihood that the misstatement may have led a stockholder to tender his stock; whereas in the absence of

---

[4] After pointing out that the key facts are best summarized in the chart marked Plaintiff's Exhibit 1(c) and giving examples of undisclosed information illustrated by the interlocking business entity relationships shown on that chart, the court concluded at 23a:

> "In this Court's mind some of these mysteries must be delved into for the benefit of the Ronson stockholders so that they might make an intelligent investment decision." (23a)

the misrepresentation he would not have tendered. [Citing case.] [12a-13a]

. . . . . .

". . . defendants have not made any showing of irreparable harm. They assert that if preliminary injunctive relief is granted, the investment world, for all practical purposes, will consider the tender offer terminated. Judge Timbers, in his excellent opinion in *Gulf & Western, supra,* demonstrated the fallacy of this argument by saying if the defendants prevail after a trial on the merits, they will not be foreclosed from renewing their tender offer. Indeed, even if they do not prevail, there is nothing in the Williams Act to prevent resolicitation of these shares with full and fair disclosure of all material facts.

"Thus, the balance of equities clearly favors the plaintiff. [15a-16a]

. . . . . .

"Plaintiff claims that defendants' attempt to characterize Mr. Ursini as the only person in control of Liquigas is misleading. Ronson believes that the following are 'control persons' within the applicable Securities laws: (1) Montecatini Edison, S.p.A., an Italian company owning approximately 25 percent of the outstanding stock of Liquigas; (2) Servizio Italia of Banca Nazionale del Lavoro, an Italian statutory fiduciary company holding approximately 36 percent of the common stock of Liquigas for the benefit of Ursini; (3) Societa Generale Immobiliare, an Italian company which holds Liquigas' guarantees of approximately $80[5] million of Manifattura Ceramica Pozzi,

[5] We have assumed that the amount "$80 million" on line 22 of 21a should read "$60 million."

S.p.A. debts to Immobiliare; and (4) defendant Michele Sindona, the sole owner of Fasco International Holding S.A., a Swiss holding company which owns a 21.6 percent interest in defendant Franklin New York Corporation as well as approximately 40 percent of Immobiliare. [18a-19a]

. . . . .

"... under the peculiar circumstances of this case and considering the Congressional purpose behind the Williams Act, the Court is more inclined to accept plaintiff's view that more than one person could be in control of a corporation. In this case, even if Ursini is the sole control person of Liquigas, there are material facts that, if omitted as has been the case here, would create a misleading description of Ursini's control. Also, many of these facts developed through discovery relate to the source of funds question because, in the Court's view, these facts would affect a stockholder's choice to tender his shares especially in light of the involvement of foreign entities unfamiliar with the problems of managing a large American corporation such as Ronson. At every stage of discovery, more and more facts developed the control relationships and intricate maneuvering of funds through international shell corporations resulting in a labyrinthinic maze which is barely comprehensible to this Court." [20a-21a]

After consideration of the record, we conclude that there was no reversible error in the conclusions by the district court that plaintiff "has met its burden of proof under Section 14(e) and is entitled to preliminary injunc-

tive relief" (23a). Defendants-appellants have not demonstrated that there has been an abuse of discretion by the district court in granting its July 5, 1973, preliminary injunction on the record before it. See Brown v. Chote, 411 U.S. 452, 93 S.Ct. 1732, 1735, 36 L.Ed.2d 420 (1973); United States Steel Corp. v. Fraternal Ass'n of Steelhaulers, 431 F.2d 1046, 1048 (3d Cir. 1970). In the latter case, Judge Aldisert pointed out:

> ". . . this appeal involves only a review of a preliminary determination by the district court, dictated by the trial judge's finding the appellees established a reasonable probability of success at final hearing coupled with a demonstration of irreparable harm absent preliminary relief. . . .
>
> . . . . .
>
> "This limited review is necessitated because the grant or denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing of the probabilities of ultimate success at final hearing with the consequences of immediate irreparable injury which could possibly flow from the denial of preliminary relief. Weighing these considerations is the responsibility of the district judge; only a clear abuse of his discretion will justify appellate reversal."

See also Gulf & Western Indus., Inc. v. Great A. & P. Tea Co., Inc., 476 F.2d 687, 692-693 (2d Cir. 1973);[6] Bath Industries, Inc. v. Blot, 427 F.2d 97, 111 (7th Cir. 1970).

---

[6] In this case, the court said, 476 F.2d at pages 698-699:

> ". . . in balancing the equities, the public interest must be considered. . . . Since it is impossible as a practical matter for the government to seek out and prosecute every important

Also, we believe that the court was entitled to point out that the deficiencies in the disclosures before it could be explored in the hearing on final injunction. The defendants contend that we should consider an eight-page printed supplement to its tender offer published on July 13, after the district court's July 5 preliminary injunction and after this court had denied their Motions To Stay by its July 12 order. We have concluded that defendants should apply to the district court for any reconsideration of the preliminary injunction in the light of this supplemental information which was not available to it prior to its order. It will be up to the district court, with its greater familiarity with the record,[7] to determine initially whether the July 13 Amendment to the Tender Offer makes it feasible to revise the current preliminary injunction prior to the prompt final hearing which the district court plans to conduct. We note that the district court opinion recognizes that (18a):

> "... the court should consider any curative steps taken by defendants to remedy any misinformation provided to the stockholders. ... Therefore, in order to determine whether defendants have violated Section 14(e), the Court must evaluate the truthfulness and accuracy of all the relevant information provided to the Ronson stockholders."

---

violation of laws designed to protect the public in the aggregate, private actions brought by members of the public in their capacities as investors or competitors, which incidentally benefit the general public interest, perform a vital public service."

[7] The district court stated in its opinion that it had reviewed "thousands of pages of depositions, interrogatories and affidavits" (7a).

Also, the following should be said, in addition to the foregoing, in view of the prompt return of this case to the district court:

A. Although the district court was justified in commenting that the tender offer presented to federal authorities "very substantial questions of administrative law," which the tender offer, as modified prior to the July 5 injunction, misleadingly treated as if probably subject to resolution without divestiture of the helicopter and defense business,[8] we agree with defendants that clearances from the several adminis-

---

[8] For example, the original tender offer stated, *inter alia*, at page 5:

". . . the Act requires approval by the CAB of the acquisition by any person of control of an air carrier, including the Helicopter Subsidiary.

"Accordingly, the Offeror and the Trustee have applied to the CAB for an order or orders (i) disclaiming jurisdiction over, or granting an exemption to, the acquisition by the Offeror and the Trustee of interests in Common Stock of the Company and (ii) granting an exemption or otherwise approving acquisition of control of the Helicopter Subsidiary by the Trustee.

"In connection with the foregoing application to the CAB, the Offeror and the Trustee have agreed that should the CAB so require, as a condition of the issuance of an order requested by the Offeror, or should the Offeror, at its option so direct, the Trustee will dispose of its interest in the Company or the Helicopter Subsidiary.

"The Offeror's counsel specializing in aviation law, Messrs. Bebchick, Sher & Kushnick, has advised the Offeror that in its opinion (i) the CAB should issue an order either disclaiming jurisdiction over, or exempting, the acquisition by the Offeror and the Trustee of the interests to be acquired by them in the Common Stock of the Company, (ii) the CAB ultimately will exempt or otherwise approve any acquisition of control of the Helicopter Subsidiary involved in the transactions, and

trative agencies involved[9] need not be secured prior to a final tender offer, provided that the approximate gross amounts, type, profits, etc., of Ronson's business affected, which may be permissibly revealed in the

---

(iii) that the foregoing actions by the CAB would constitute an implicit determination that the Helicopter Subsidiary will remain a United States citizen. In such counsel's opinion, the CAB might limit the duration of the Trust or require the disposition of the Helicopter Subsidiary to another party. If the CAB did impose the latter requirement, it might be feasible, in lieu of a sale of the Helicopter Subsidiary, to surrender the authority to operate an air taxi service as a common carrier, since such counsel is of the view that the transfer of the stock of the Helicopter Subsidiary to the Trustee and vesting the Trustee with effective control over the Helicopter Subsidiary would satisfy the Federal Aviation Administration as respects matters under its jurisdiction."

By order of July 19, 1973, at Docket Nos. 25,583 and 25,603, the Civil Aeronautics Board stated at page 5:

". . . we are not prepared to find, absent further development of the underlying facts relating to the issue, that the voting trust agreement by its own terms insulates the acquisition of control of Ronson Helicopters from the Board's jurisdiction under section 408(a)(5) of the Act. We conclude, therefore, that a disclaimer of jurisdiction would not be warranted.

"Under the terms of the proviso to section 408(a)(5), the Board may exempt the acquisition of a non-certificated air carrier from the requirements of Board approval 'to the extent and for such periods as may be in the public interest.' Applicants' request involves complex issues of fact, law, and Board policy relating to such matters as the qualification of Ronson Helicopters, following its acquisition, to engage as a citizen of the United States in air transportation, the Board's policy regarding foreign ownership or control of a U.S. air carrier, and the adequacy of the trust agreement herein to insulate the air carrier, Ronson Helicopters, from the ownership and control of Liquigas/Liquifin. Under all the circumstances, we are not persuaded that, on the basis of the application in Docket 25583 and other documents before us, a sufficient showing of public interest has been made to warrant the grant of an exemption

light of the security needs of the defense business as determined by the district court, are disclosed.

B. The following statement of Judge Mansfield in Sonesta International Hotels Corporation v. Wellington Associates, 483 F.2d 247 (2d Cir., 1973), is applicable to the record before the district court on July 5:

"Where the foregoing standard has been met preliminary injunctive relief is a particularly useful remedy for prevention of probable violations of the disclosure requirements of the Act, for the reason that prior to consummation of the offer the court still has a variety of methods available to it for correction of the misstatements or omissions. [Citing case.] But once the tender offer has been consummated it becomes difficult, and sometimes virtually impossible, for a court to 'unscramble the eggs.' [Citing cases.] On the other hand, preliminary relief does not, in assuring that the offer will be lawfully made, sacrifice the legit-

---

under section 408(a)(5) in respect to the transaction herein. Therefore, applicants' request for exemption will be denied." [Footnotes omitted.]

The first two paragraphs of the ordering terms read (p. 7):

"... It Is Ordered That:

"1. Applicants' requests for disclaimer of jurisdiction and exemption pursuant to the proviso of section 408(a)(5) in respect to the acquisition and control relationships in Docket 25583, be and they hereby are denied;

"2. Applicants' requests for disclaimer of jurisdiction over or approval of the interlocking relationships in Docket 25603, and for approval of the acquisition and control relationships in Docket 25583, be and they hereby are set for hearing before an Administrative Law Judge of the Board at a time and place to be hereafter designated; ...."

*49 U.S.C. § 1378(a)(5) makes it unlawful for any person to acquire control of an air carrier "in any manner whatsoever" without the approval of the CAB.

imate desires of shareholders to accept the offer. If the offeror is subsequently vindicated after a trial on the merits, the offer may be renewed. Thus, in the normal situation, when it appears likely that the offer may contain materially misleading statements or omissions as made, the interest of the shareholders and of the public in full disclosure of relevant circumstances renders preliminary injunctive relief an appropriate method of remedying the deficiencies in disclosure before the offer is consummated.

"The probability of success on the merits in any application for injunctive relief turns greatly upon whether the plaintiff has shown that the tender offer under attack has misstated or omitted *material* facts. The materiality of facts allegedly misstated or omitted depends, in turn, upon whether a reasonable investor might have considered them to be important in deciding whether to accept the tender offer."

As to materiality of the facts, see also SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968), quoted in *Sonesta, supra,* 483 F.2d at p. 250.

Our affirmance is without prejudice to any application defendants may make to the district court for vacation or modification of its preliminary injunction in the light of the above-mentioned July 13 Notice of Amendment and any additional disclosures defendants may make, in the light of the present situation,[10] with respect to their OFFER TO PURCHASE 2,200,000 shares of the common stock of Ronson Corporation.

For the foregoing reasons, the July 5, 1973, district court order will be affirmed and the case will be remanded to

[10] See, for example, the July 19 CAB order mentioned above.

the district court for further proceedings not inconsistent with this opinion.[11] The mandate or certified judgment in lieu of mandate shall issue forthwith.

[11] An opinion will be filed at No. 73-1606 dealing with certain contentions raised by the appellants in that appeal which are not applicable to the appellants at No. 73-1587.

Appendix B-1

Judgment, United States Court of Appeals for the Third Circuit, Filed July 24, 1973

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 73-1587 and 73-1606

RONSON CORPORATION,

vs.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Liquifin Aktiengesellschaft, Liquigas S.p.A., Kuhn, Loeb & Co., Inc., D. F. King & Co., Inc., Servizio Italia of Banca Nazionale del Lavoro, Philip Marfuggi, Raffaele Ursini, and Michele Sindona,

Appellants in No. 73-1587

Franklin National Bank and
Franklin New York Corporation,

Appellants in No. 73-1606

(D. C. Civil Action No. 785-73)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE ..... DISTRICT OF NEW JERSEY

Present:

VAN DUSEN and WEIS,

Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the ..... District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed July 5, 1973, be, and the same is hereby affirmed, and the cause remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court. Costs taxed against appellants.

ATTEST:

(Signature Illegible)
Clerk

July 24, 1973

Appendix C

Opinion, United States District Court, District of New Jersey, Dated August 15, 1973

RONSON CORPORATION,

Plaintiff,

vs.

LIQUIFIN AKTIENGESELLSCHAFT, *et al.*,

Defendants.

West Long Branch, New Jersey
August 15, 1973

BEFORE:

THE HONORABLE CLARKSON S. FISHER,

U.S.D.J.

(No Appearances.)

The Court: Following the grant of a preliminary injunction blocking the defendants' tender offer to stockholders on July 5, 1973, defendants took an appeal to the Third Circuit Court of Appeals and the Order of this Court was affirmed. Ronson Corporation v. Liquifin A.G., —— F. 2d —— (Slip Opinion at 12, 3d Cir. July 24, 1973) (per curiam).

The operative facts concerning this tender offer have been discussed in the opinion of this Court and the opinion of the Court of Appeals, therefore it would be idle to restate them at this time.

Defendants now move for a modification or vacation of the preliminary injunction; their motion is based upon an 8-page printed supplement to the tender offer published on July 13, 1973, and a 16-page amendment which has been proposed to this Court but as yet not been made public by direction of this Court. The Court of Appeals specifically noted that its ruling was not based upon the July 13, 1973 amendment to the tender offer and that this Court must "determine initially" whether or not the July 13, 1973 amendment would be sufficient grounds "to revise" the preliminary injunction. (Slip Opinion at 8).

The Court of Appeals further stated that the defendants could also apply for vacation or modification of the preliminary injunction based upon "any additional disclosures." (Slip Opinion at 12). The question presented to this Court on the motion pending is now whether or not the July 13, 1973 and the August 1, 1973 amendments have remedied the tender offer sufficiently to induce this Court to modify or vacate the preliminary injunction.

For the following reasons this Court finds no grounds for disturbing the preliminary injunction as previously entered. Clearly the July 13, 1973 amendment to the tender offer does not remedy the weaknesses of the previous tender offers because it does not clearly divulge sufficient material facts. While some factual statements are included the July 13, 1973 amendment may be characterized as a multitude of opinions and conclusions of the draftsman seeking to meet the problems raised by the previous tender offers. The August 1, 1973 proposed amendment goes further in attempting to reveal facts to the Ronson stockholders, particularly in the area of difficult administrative legal problems, but it does not solve the factual problems and the other areas of the tender offer which led this Court to enter the preliminary injunction on July 5, 1973.

While the August 1, 1973 proposed amendment states that the previous offers and amendments contain "important information which should be read," it implies that these previous statements should be examined. The difficulty with that is these previous filings contain misleading facts and omissions which form the basis for the entry of the preliminary injunction, and, which, perhaps when examined, could create a confusing view of the important and material facts for any stockholder attempting to decide whether or not to offer his shares for sale.

From the previous literature presented to the Ronson stockholders which may best be charitably described as incomplete, the stockholders would have to sort out and determine which statements were operative, a result certainly not intended by Congress in the Williams Act.

However, the most troublesome issue raised by these amendments is the extent to which this Court must attempt to evaluate the "truthfulness and accuracy of all the relevant information provided to the Ronson stockholders."

The Court of Appeals in its opinion (Slip Opinion at 8-9) utilized this language from the opinion of this Court, and the parties disagree as to the meaning and emphasis this factor should have in resolving the litigation here. It should be obvious that the Williams Act requires truthful and accurate disclosure of all material facts in any tender offer situation. It is a requirement that is necessarily implied into the statute.

It becomes the function of any district court to referee the disputes arising from a tender offer which is properly before the court, but in so doing the Court must not be blind to all the circumstances and peculiarities of each tender offer "game" as it unfolds.

From the outset the defendants have disclosed only what facts in their opinion was necessary or were forced to divulge by the indications of this Court and the Court of Appeals. Obviously this is not a policy favored by the mandate of the Williams Act.

The record, as it now stands, contains at least four attempts by defendants to meet the standards of truthful disclosure under the Williams Act. Each time the defendants claimed to have satisfied these standards; yet the record continues to demonstrate either the omission of material facts or a characterization of information which tend to make these facts which are revealed unclear.

On the basis of the authorities before it, especially Sonesta International Hotels Corp. v. Wellington Associates, No. 1055 (2d Cir. July 3, 1973), the Court of Appeals in this case could have fashioned a remedy which would have continued the preliminary injunction unless the defendants revealed certain facts which the Court of Appeals would view as complete and lawful disclosure by the offeror. See Sonesta, supra, Slip Opinion at 20. This the Third Circuit Court of Appeals did not do. Without being presumptuous, it seems to this Court that one reason, inter alia, it did not is that the evaluation of truthful disclosures is the function best suited for the district court, especially where a record is voluminous and complex.

In view of the entire record, including the methodology used by the defendants in attempting to comply with the legal standards of disclosure, this Court can not, at this point, determine the completeness and accuracy of all the information provided to the Ronson stockholders. If this case merely involved the revelation of a few undisputed specific facts clearly developed on the record as in Sonesta, supra, the difficulties here could be resolved swiftly by a

decision of the Court of Appeals or by this Court. This case is not that simple and defendants' motion to modify or vacate must be denied.

The defendants would have been well advised to have made a complete disclosure at the outset so as to avoid protracted and unnecessary litigation, but it has not and the matter must proceed, at least in my view, to a full and complete hearing on a motion for a permanent injunction.

This ruling, of course, in no way inhibits defendants from taking curative steps, but in view of the entire record it would seem that the only way to get to the accuracy and completeness behind the tender offer is a full hearing.

Accordingly, defendants' motion to vacate or modify the preliminary injunction based upon the July 13, 1973 amendment and the proposed amendment dated August 1, 1973, is denied. However, in fairness to the defendants, the tender offer under its present status will be continued until August 22, 1973, to apply for a stay to the Court of Appeals.

An Order will be submitted at once.

Appendix D

Opinion, United States District Court, District of New Jersey Dated January 11, 1974

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 785-73

RONSON CORPORATION,

Plaintiff,

vs.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Defendants.

APPEARANCES:

McCARTER & ENGLISH, Esquires,

By: Raymond Falls, Esq., and
David P. Hyde, Esq. (N.Y.Bar)
For the Plaintiff

CARPENTER, BENNETT & MORRISSEY, Esqs.,

By: John Keale, Esq., and
Donald J. Zoeller, Esq. (N.Y.Bar)
For the Defendant Liquifin etc.

HANNOCK, WEISMAN, STERN & BESSER, Esqs.,

By: Milton Kunen, Esq. (N.Y.Bar)
For the Defendant Franklin National Bank etc.

STRYKER, TAMS & DILL, Esqs.,

By: Robert S. Rifkind, Esquire (N.Y.Bar)
For the Defendant Kuhn, Loeb and Company.

FISHER, *District Judge*

In this lengthy and complex litigation plaintiff now seeks a permanent injunction under Section 14(e) of the Securities Exchange Act of 1934,[1] against the defendants who are attempting to acquire control of the plaintiff, Ronson Corporation, by means of a cash tender offer. The defendants seek to remove the preliminary injunction against them entered by this Court on July 5, 1973 so that their tender offer may proceed.

In view of the status of this case, where now the parties are before the Court on a final hearing for permanent injunctive relief, a brief review of the procedural history

[1] Section 14(e) was added to the Securities Exchange Act of 1934 by the Williams Act, P.L. 90-439, as amended by P.L. 91-567, 15 U.S.C. Sec. 78n(e). *See, Ronson Corporation* v. *Liquifin Aktiengesellschaft*, 483 F.2d 846, 847 n. 3 (3d Cir. 1973); S.Rep.No. 510, 90th Cong., 2d Sess. (1968) quoted in 2 U.S. Code Cong. & Adm. News 2811, 2821 (1968); *H.K. Porter Co., Inc.* v. *Nicholson File Co.*, 353 F.Supp. 153, 163 (D.R.I. 1972), *aff'd*, 482 F.2d 421 (1st Cir. 1973).

is necessary. The complaint was filed as the result of a tender offer by defendant Liquifin Aktiengesellschaft ("Liquifin"), a Liechtenstein company and a wholly-owned subsidiary of a large Italian industrial company, defendant Liquigas S.p.A. ("Liquigas") to buy Ronson common stock at $8.50 per share.[2] This tender offer was publicly announced in newspapers and financial publications and filed with the Securities and Exchange Commission ("SEC") on May 31, 1973. On June 5, 1973 this Court entered a temporary restraining order and directed expedited discovery.

After a hearing, a preliminary injunction was entered on July 5, 1973 which was subsequently affirmed by the Court of Appeals for this Circuit. *Ronson Corporation* v. *Liquifin Aktiengesellschaft,* 483 F.2d 846 (3d Cir. 1973) and *Ronson Corporation* v. *Liquifin Aktiengesellschaft,* 483 F.2d 852 (3d Cir. 1973).

Upon the return of the case to this forum, the defendants moved to modify or vacate the preliminary injunction on the basis of amendments to the tender offer. Their motion, based upon the amendments of July 13 and the unpublished amendments of August 1, was denied on August 15, 1973. On September 26, 1973 this Court denied a similar motion of defendants based upon a restated tender offer

---

[2] The price per share which the offeror will pay for tendered shares of Ronson common stock has been reduced to $8.18. The number of shares which the offeror is willing to purchase has been increased from 2,200,000 to 2,288,000. These adjustments were made by the offeror after plaintiff Ronson announced its intention on December 19, 1973 to declare a four percent stock dividend payable on February 15, 1974 and a cash dividend of six cents per share payable on January 24, 1974 to the shareholders of record on January 10, 1974. On December 28, 1973 this Court entered an order which permitted the offeror to file an amendment to the Schedule 13D statement previously filed with the Securities and Exchange Commission. That amendment described these adjustments to the offer.

dated September 11, 1973 (hereinafter referred to as the "Restatement"). However, this denial was without prejudice to renew at the final hearing for permanent injunctive relief. Defendants' renewal of this motion is now before the Court.

I

In an effort to resolve promptly and fairly only the claims for injunctive relief, this Court reviewed plaintiff's requests for discovery, and by orders of September 26, 1973, October 12, 1973, October 25, 1973 and December 5, 1973, directed the course of discovery. As stated previously, these orders were entered pursuant to F.R.Civ.P. 26 which provides a remedy to protect any party from financial embarrassment, undue burden, or expense. Both parties during this litigation have submitted confidential commercial information to the Court *in camera*.[3]

Plaintiff contends that the unavailability of these documents has adversely affected its discovery rights. These arguments are without merit. It cannot be questioned that Rule 26 provides the authority to enter such orders. Under the Williams Act, the Court becomes the trier of fact to determine whether injunctive relief should be entered. If the information provided *in camera* fails to resolve adequately the important factual disputes, the party offering these documents runs the risk of having that issue of fact determined in favor of the opposing party or perhaps a ruling that it has failed to sustain a burden of proof placed upon it by the law. Also, if the Court determines that this information does not fall within any legally rec-

[3] These documents will be sealed with directions that only this Court or any Judge or Justice of a federal appellate court may break the seal to inspect the documents.

ognized privilege, or would not financially embarrass a party but, instead, would aid a party in conducting discovery, the Court could make that information available.[4]

Throughout these proceedings it has been obvious that the foreign defendants are subject to this nation's securities laws. If they chose not to furnish certain information, they could be faced with a choice between revealing such information or having the lawful restraints of this Court continued against them.[5] Finally, after thorough review of all the *in camera* materials, I am satisfied that sufficient need has been demonstrated by the parties to keep these documents under seal and that none of the parties have been prejudiced by the orders of the Court.[6]

One other matter deserves brief comment at this point. Defendants have complained that the plaintiff target company has utilized this litigation to preserve the corporate life of its incumbent management, and has, with this purpose in mind, taken every opportunity to further delay these proceedings. *See, e.g.,* Transcript of Motion of November 21, 1973 at 11, 13-14, 18.

These arguments have not aided the Court to resolve the complex issues presented here. It is clear that Ronson,

---

[4] *See, e.g.,* Deposition of La Russa and Bianchi of November 14, 1973 at 297. It is also interesting to note that one of plaintiff's experts on Italian Law, Giandomenico Magrone, was reluctant to discuss his client relationship with Fiat, a large Italian car manufacturer. Transcript of Hearing on January 4, 1974 at 158.

[5] *Cf. Fontaine* v. *Securities and Exchange Commission,* 259 F. Supp. 880, 889-891 (D.P.R. 1966); *see also* Deposition of La Russa and Bianchi of November 14, 1973 at 296-297; Transcript of Motion of November 21, 1973 at 29-30.

[6] Plaintiff's documents concern U.S. Department of Defense contracts involving national security matters and other commercial information about Ronson's heliocopter subsidiary. Defendants' documents contain confidential commercial information.

as the target corporation, has standing to sue the defendants for injunctive relief. *Gulf & Western Indus., Inc.* v. *Great A. & P. Tea Co., Inc.*, 476 F.2d 687, 696 n.14 (2d Cir. 1973). However, the legislative history of Section 14(e) reveals that Congress was hardly motivated by concern for incumbent management of the target company or intended the use of the statute to frustrate tender offers. The overriding purpose of this Section is the protection of the investing stockholders of the public so that they may have the benefit of full and fair disclosure of all material facts to make an informed investment decision. While counsel have zealously engaged in protecting their clients' rights in this high stakes struggle for corporate control of Ronson, this Court has not forgotten that Section 14(e) may not be diverted from its important purpose of protecting the public investor to be utilized solely for the benefit of incumbent management or control groups "jockeying" for corporate power. *Nicholson File Company* v. *H.K. Porter Co.*, 341 F.Supp. 508, 520 (D.R.I. 1972), *aff'd*, 482 F.2d 421, 423-425 (1st Cir. 1973); *see also Butler Aviation Int'l, Inc.* v. *Comprehensive Designers, Inc.*, 425 F.2d 842, 844-845 (2d Cir. 1970).

To determine if permanent injunctive relief should be granted or if the preliminary injunction should be vacated,[7]

---

[7] The Court at this time does not rule upon any of plaintiff's claims for damages. It is important now only to resolve the claims for injunctive relief. Transcript of Motion of November 21, 1973 at 4-7, 18. Whether any damages can be or should be awarded to further the Congressional purposes of Section 14(e) may be determined at a later stage of these proceedings. For a discussion of the damages issue, *see, e.g., Chris-Craft Industries, Inc.* v. *Piper Aircraft Corp.*, 480 F.2d 341 (2d Cir. 1973), *cert. denied*, 42 U.S. L.W. 3227 (Oct. 9, 1973) (Nos. 73-152, 73-153, 73-154); *H. K. Porter Company, Inc.* v. *Nicholson File Company*, 482 F.2d 421, (1st Cir. 1973). In these cases the offerors sought damages against the target companies for the statements made by the target companies to their own stockholders in violation of Section 14(e).

the issue is whether the defendants, in the Restatement of the tender offer, have failed to disclose adequately or materially misrepresented the persons behind and the methods used to fund the offer, the effect of foreign laws on the offer, and the administrative obstacles under federal law to the offer.[8]

Under Section 14(e), as in any civil suit, the burden falls upon the plaintiff to demonstrate by a preponderance of the evidence that it is entitled to permanent injunctive relief.[9] Neither the offeror nor the target company may omit or misrepresent a material fact to the stockholders of the target company.[10] The obligation for full and accurate disclosure of all material facts in the offer is "placed squarely" on the offeror and may not be shifted "to the shoulders of others"; otherwise the purposes of the Williams Act might be avoided by permitting the offeror to look to the target corporation to correct the deficiencies in the offer. *Sonesta International Hotels Corp.* v. *Wellington Associates*, 483 F.2d 247, 255 (2d Cir. 1973). *Sonesta*, however, does not shift any burden of proof in this liti-

---

[8] Plaintiff does not press for permanent injunctive relief based upon violations of federal anti-trust statutes as alleged in the complaint. Transcript of Motion of November 21, 1973 at 12, 21.

[9] *See, Chris-Craft, supra* at 362, 364; *cf. Gulf & Western Indus., Inc.* v. *Great A. & P. Tea Co., Inc.*, 476, F.2d 687, 689 (2d Cir. 1973).

[10] " 'A material fact is that which a reasonable investor would consider important in the making of his decision to tender or not to tender in response to Liquifin's offer. (Citing cases.) A material misrepresentation occurs when there is a substantial likelihood that the misstatement may have led a stockholder to tender his stock; whereas in the absence of the misrepresentation he would not have tendered. (Citing cases.)' "

Ronson, supra 483 F.2d at 848 quoting the opinion of this Court; *see also Sonesta International Hotels Corp.* v. *Wellington Associates*, 483 F.2d 247, 251 esp n. 3 (2d Cir. 1973).

gation to the defendants. There the Court of Appeals merely indicated that the target company need not, in its communications to its stockholders, point out specific faults in the disclosures of the offeror. *Sonesta, supra* at 254-255. Under Section 14(e) the plaintiff target company, Ronson, has the burden at trial of establishing that any alleged omissions or misrepresentations in the offer are material and that any of the tendering stockholders would probably not have tendered their shares if the alleged violations had not occurred. *Gulf & Western, supra* at 696.

On the other hand, the offeror clearly has the right to amend its offer to cure any defects,[11] and then rely upon those amendments to satisfy the requirements of Section 14(e). *Ronson, supra,* 483 F.2d at 850, 852; *Nicholson File Company, supra,* 341 F.Supp. at 521. In this action defendants have amended their offer on several occasions. They now assert that the previous deficiencies in the offer have been corrected by the Restatement so that the injunction against them may be removed.

II

The most important of plaintiff's allegations is that the defendants have failed to disclose adequately or materially misrepresented the methods used to fund and the persons behind the tender offer.

The Restatement describes how the twenty million dollars for the purchase of Ronson common stock was advanced to the account of the offeror, Liquifin. Restatement, para-

---

[11] Under Section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78 m (d), it has been suggested that the offeror has a "continuing obligation" to remedy any errors. *G.A.F. Corporation* v. *Milstein,* 453 F.2d 709, 720-721 (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972).

graph 7(d) at 14-16. Briefly, at the direction of Liquigas, Liquimportex Aktiengesellschaft ("Liquimportex") another wholly-owned subsidiary of Liquigas, sold a forty-nine percent interest in Liquipar S.A. ("Liquipar"), a subsidiary holding company for the Brazilian operations of Liquigas.[12] This minority interest in Liquipar was sold for cash to Capitalfin International Limited ("Capitalfin"), a Bahamian company, in May, 1973. The funds on deposit in defendant Franklin National Bank were acquired in this sale. The Restatement also describes the Liquigas-Liquipar Brazilian operations, and even explains that their capitalization came from Turner Anstalt, a Liechtenstein trust created by Holding Gasliq S.A., a wholly-owned Swiss subsidiary of Liquigas. Testimony at trial, extensive depositions and production of documents demonstrate that the funds for this tender offer were in fact provided through the Liquimportex to Capitalfin sale of Liquipar stock.[13]

The only indication that perhaps the funds for the tender offer were raised by another method is the theory that these funds are related to or commingled with a fifty million dollar unsecured loan by several major international banks to Liquigas Jersey (Holding) Limited, a wholly-owned Liquigas subsidiary. This loan for additional capital for Liquigas' South American operations was finalized in August, 1973. Defendant Marfuggi admitted in his deposition on October 1, 1973 that negotiations for this loan had commenced prior to the tender offer. Plain-

---

[12] At page 10 of the Restatement, Liquipar has been identified incorrectly as a Liechtenstein corporation. Apparently Liquipar is a Brazilian company, and should be properly identified in the tender offer.

[13] *See, e.g.*, Transcript of hearing on January 3, 1973 at 235-240 (Defendants' summary of the record relating to this transaction).

tiff speculates that perhaps the funds on deposit did not originate from an arm's length sale with Capitalfin, but by a sale dependent upon the concurrent financing arrangements of the loan, especially since Capitalfin participated in both the loan and the sale of Liquipar stock.

The record, however, does not support this theory. The loan occurred well after Capitalfin purchased the interest in Liquapar and after the twenty million dollars to pay for the tendered shares were deposited in defendant Franklin National Bank. The depositions of Ursini, Marfuggi and Bianchi, as well as the documents produced,[14] all indicate that this loan was completely unrelated to the sale of Liquipar stock to Capitalfin.

Because this loan is not related to the source of funds for the tender offer, Section 14(e) is not violated if the defendants omit a description of this transaction in the offer. It is unnecessary to discuss in the offer an unrelated, ordinary business transaction between the offeror's parent, a large international company, and one of its subsidiaries.

While plaintiff may have raised several "fascinating" business questions about the transactions which generated the funds to pay for Ronson shares, it has failed to prove that the Restatement misrepresents or omits material *facts* concerning these transactions. The business considerations which motivated the defendants to raise the funds for the offer in this particular manner may be matters for speculation and theory, but there is not sufficient evidence on the record to conclude that these transactions took place other

[14] The parties, except for the defendants Franklin National Bank and Franklin New York Corporation, entered into a stipulation (hereinafter referred to as "Stipulation of Record") to include certain items in the record for the hearing on a permanent injunction.

than as described in the Restatement.[15] Having failed to meet its burden of proof, plaintiff is not entitled to permanent injunctive relief on its claims relating to the source of funds issue.

Because the offeror, Liquifin, is a wholly-owned subsidiary of Liquigas, it is important under the Williams Act for the Ronson stockholders to know who controls Liquigas, a large Italian company with two hundred fifty million outstanding shares of fully voting stock.[16] The Restatement identifies defendant Raffaele Ursini, the managing director of Liquigas and a member of its board of directors, as "the person in control of Liquigas". Restatement at 11. Plaintiff contends that Ursini is not in control, or alternatively, that the description of his control in the Restatement is misleading.

The record in this case inevitably leads to the conclusion that only defendant Ursini controls Liquigas. As the managing director of Liquigas and most of its subsidiaries, Ursini makes the important business decisions for the Liquigas group nearly every day. He is the largest Liqui-

---

[15] Defendants contend that transactions such as the Liquipar minority interest stock sale can be explained as simply a bargain struck between a seller and a willing buyer. Transcript of Hearing on January 3, 1974 at 189-200, esp. 195.

[16] Liquigas has issued fifty million shares of preferred stock with voting rights limited to extraordinary stockholders' meetings. These details are explained in the Restatement, paragraph 7(a) at page 10, note 5. Because of the limited voting rights, ownership of these preferred shares could hardly provide an effective means to control Liquigas. The owners of more than five percent of these shares appear to be Montecatini Edison (18.95%), Credito Italiano (8.50%) and Banca C. Steinhauslin (7.74%). Liquigas has also issued debentures which are convertible into preferred shares after 1979. Marfuggi Deposition June 12, 1973 at 183; Marfuggi Deposition October 1, 1973 at 35; Item 8, Doc. No. 2 on page 11 of the Stipulation of Record. There is no need to discuss these debentures in the Restatement.

gas stockholder with control over ninety million shares of common stock or thirty-six percent of the outstanding common shares of Liquigas. *The Restatement fully discloses* that these shares are recorded as owned by Servizio Italia del Banca Nazionale del Lavoro ("Servizio Italia"), an Italian fiduciary company which holds these shares for the benefit of Ursini in a capacity similar to an American brokerage firm holding stock in a "street name account".[17] Servizio Italia is a subsidiary of Banca Nazionale del Lavoro, Italy's largest bank.

The written agreement of March 21, 1973 between Servizio Italia and Ursini as well as the certificate of Servizio Italia corroborate the disclosures in the Restatement.[18] These documents establish the fiduciary relationship whereby Servizio is to hold the shares for Ursini, vote them according to his instructions and have them registered in his name whenever he so directs. The record also estab-

---

[17] Defendant Ursini's ninety million shares were represented by 4,866 separate certificates in May, 1973. Apparently inquiries were made whether a smaller number of certificates could replace the 4,866 certificates. Unverified answers to interrogatories of Liquigas, Item 6 on page 24 of the Stipulation of Record filed on January 2, 1974. The verified answers to these interrogatories of Luigi Finazzi were submitted during the course of the hearing. *See also* Documents produced by Defendants on December 3, 1973, Doc. Nos. 11-16, Item 12 on page 24 of the Stipulation of Record.

The office of administrative services of Liquigas evidently handled the request in the ordinary course of business. On June 27, 1973 the old certificates were burned and replaced by thirteen new certificates. Doc. No. 16, *supra* and Exhibit DL-1 in Evidence; Transcript of Hearing on January 2, 1974 at 47-48. From these circumstances plaintiff contends hypothetically that Ursini is "covering up" the persons from whom he obtained the shares by destroying the endorsements which would appear on the old certificates and thus preventing disclosure of the identity of the person "secretly" in control of his shares and Liquigas.

[18] Deposition of Ursini in June 1973, item 13 on page 6 of the Stipulation of Record, Exhibits M-141 and M-142; Transcript of Hearing on January 3, 1974 at 225-227 (Defendants' summary).

lishes that these shares are free from any liens[19] and that Servizio has in the past and will continue in the future to vote these shares in accordance with Ursini's instructions which he has always given.[20]

The Restatement also reveals that while Ursini has agreed to sell fifteen million of these shares to a third party, he will retain the voting rights to these shares and the right of first refusal should the purchaser propose to sell them.[21]

Nevertheless plaintiff urges that "suspicious" facts in the record "counterindicate" that defendant Ursini does not control his stock nor Liquigas. Ronson has named several persons and entities that it claims could be in control of Liquigas.[22] Plaintiff also claims that because Ursini has not affirmatively proved how he paid for each of his ninety million Liquigas shares, the money to obtain this stock must have come from a "secret" person who continues to dominate Ursini and Liquigas.[23]

However, the record as a whole has not established Ronson's suspicions and theories as provable facts. The preponderance of the evidence clearly demonstrates that defendant Ursini controls Liquigas. In fact, this tender offer, a very important business transaction to any corporation

---

[19] Deposition of Ursini in June, 1973, item 13 on page 6 of the Stipulation of Record, Exhibit M-142. The parties dispute the translation of the Italian terms into English as "freely withdrawable deposit" or "free from any lien". Deposition of Ursini in November 1973, item 17 on page 6 of the Stipulation of Record, at 445-451.

[20] Transcript of Hearing on January 3, 1974 at 224-225 (Defendants' summary).

[21] Restatement at 11. The identity of the purchaser has been revealed to the Court *in camera* by the affidavit of defendant Ursini dated November 5, 1973.

[22] Transcript of Hearing of January 3, 1974 at 173-174.

[23] *Id.* at 178-179.

such as Liquigas, has been dominated in every crucial aspect by Ursini. Even Ronson's counsel has admitted that there is "no doubt" that Ursini "is the key man" in this tender offer and that the other witnesses consider him as "the guy who knows" about most of the key issues.[24] It may be interesting that Ursini has risen from a salaried employee of Liquigas to its chief executive and largest stockholder. In view of his role in this offer and other significant transactions of Liquigas, it is not that important how he attained this control position but only whether he does in fact control Liquigas as the offer states.[25] Even if some "secret" person aided him in obtaining ninety million shares of Liquigas, the evidence shows that Ursini now controls these shares and Liquigas.

Other entities were mentioned during the proceedings for preliminary injunctive relief as possible control persons of Liquigas. One such company is Montecatini Edison S.p.A. ("Montedison"), which owns twenty-two percent of Liquigas' common stock. Owning less shares than Ursini, it would be difficult for Montedison to control Liquigas. The record indicates that Montedison has not attempted to influence the operations of Liquigas nor has it attempted to seek any representation on the Liquigas Board of Directors.[26] The Restatement explains these facts as well as the ownership of Montedison's stock. Restatement at 12.

---

[24] Transcript of Motion of November 21, 1973 at 15-16. Defendant Ursini has been deposed on two separate occasions for a total of six days. *Id.*, at 17; Items 13 and 17 on page 6 of the Stipulation of Record.

[25] Deposition of La Russa and Bianchi of November 14, 1973, Items 15 and 16 on page 6 of the Stipulation of Record, at 300-301.

[26] Deposition of Marfuggi on June 12, 1973, Item 7 on page 6 of the Stipulation of Record, at 173-174; Deposition of Ursini on November 16, 1973, Item 17 on page 6 of the Stipulation of Record, at 571.

While approximately eighty percent of Montedison's stock is owned by private enterprises and the general public, Ente Nazionale Idrocarburi ("ENI") and Istituto per la Recostruzione ("IRI"), both Italian governmental authorities, own approximately fifteen and five percent respectively. This ownership is acknowledged. Restatement at 12.

The Restatement also reveals that the Italian Government controls ENI, IRI and Banca Nazionale del Lavoro, the owner of eighty percent of Servizio Italia, the fiduciary holder of Ursini's Liquigas shares. Neither ENI, IRI nor the Italian Government owns any Liquigas stock. Restatement at 12. The Restatement explains that ENI, Montedison and Banca Nazionale del Lavoro are three of four groups owning Capitalfin, the purchaser of the Liquipar stock from which the funds for the tender offer originated. The Restatement declares that Capitalfin does not own any Liquigas stock, nor does Liquigas own any Capitalfin stock.

These intricate relationships have been fully revealed to the Ronson stockholders. The record does not provide any factual basis from which to conclude that any of these entities control Liquigas. Thus, the Restatement does not violate Section 14(e) with respect to these disclosures.

Another claim of Ronson is that Societa General Immobiliare ("Immobiliare") could be in control of Liquigas because Liquigas has guaranteed payment of nearly sixty million dollars of Manifattura Cermamica Pozzi S.p.A ("Pozzi") debts to Immobiliare. The theory of this claim is that Pozzi will not be able to meet these obligations and when Liquigas is called upon and unable to perform its guaranties, Immobiliare will become the largest creditor of Liquigas and in a position to control it.

The Williams Act requires only that the person in control of the offeror at the time of the offer be identified.

During the preliminary stages of this suit, it was necessary for further inquiry into the Pozzi transactions because if, as a result of these substantial guarantees, Immobiliare would be able in the near future to control Liquigas, that would be a material fact to a stockholder deciding whether to tender his Ronson shares to a wholly owned subsidiary of Liquigas.[27]

The defendants have described the basic facts concerning the guarantee of Pozzi debts to Immobiliare. These guarantees are related to Liquigas' purchase of Pozzi's petrochemical business. Restatement at 12. The record supports the description in the Restatement of these transactions.[28]

Ronson argues that certain "interesting unanswered questions" about the Pozzi transactions justify permanent injunctive relief. Yet after trial these theoretical questions remain speculative and unproven. At first plaintiff seemed to complain that Liquigas had "mortgaged away" its future by guaranteeing such large debts of a company like Pozzi, and then plaintiff attacked the transactions as too "good" for Liquigas when certain stockholders suits were filed in Italy.

After a review of the evidence this Court concludes that the disclosures concerning the Liquigas-Pozzi transactions do not violate Section 14(e). The important facts are revealed, and the Ronson stockholders have been alerted that perhaps at some point in the future Immobiliare may influence or even control Liquigas if these debts of Pozzi can not be guaranteed by Liquigas.[29]

---

[27] *Ronson Corp.* v. *Liquifin Aktiengesellschaft*, Civ. No. 785-73, at 17-18 (D.N.J. July 3, 1973) (Findings of Fact and Conclusions of Law).

[28] *See, e.g.*, Transcript of Hearing on January 3, 1974 at 228-235 (Defendants' summary).

[29] Also disclosed is the fact that payments for Liquigas' obligations are not due for three years. They are payable over an additional seven year period. Restatement at 13.

Finally, Ronson also asserts that defendant Michele Sindona controls Liquigas because he is the "secret" beneficial owner of Ursini's Liquigas shares. Sindona became involved in this tender offer as a personal and business friend of Ursini. Ursini consulted with Sindona for guidance in making the tender offer in this country. Sindona introduced Ursini to counsel and investment bankers as well as providing his offices for meetings concerning the offer. All of these dealings are candidly revealed to the Ronson stockholders. Restatement at 13.

Sindona is also involved in this tender offer through his various business interests. He owns approximately one third of the stock of Immobiliare through his wholly-owned subsidiary, Fasco. Through Fasco he owns 21.6% of the stock of defendant Franklin New York Corporation which wholly owns defendant Franklin National Bank, the depository bank for the funds in this tender offer. Sindona claims that he has no direct or indirect stock interest in, nor is he a director or officer of, Liquigas. Sindona will not receive any compensation from Liquigas for his assistance in the offer. All of this information is provided to Ronson stockholders. Restatement at 13-14.

Ronson's claims against Sindona do not rely upon the factual proofs in the record, but instead, depend upon hypothetical inferences allegedly so convincing in logic that they overwhelm the evidence which clearly shows that Ursini controls Liquigas.[30] Ronson relies upon Ursini's exercise

[30] Apparently Ronson is claiming elsewhere that one Vincenzo Cozzaniga instead of Sindona "secretly" controls Liquigas. *Ronson v. Liquifin Aktiengesellschaft*, 73 Civ. 4026 (S.D.N.Y.), Exhibit DL-3 in Evidence; Transcript of Hearing on January 3, 1974 at 181-183, 210. It should also be noted that two other exhibits were admitted into evidence over plaintiff's objection. Transcript of Hearing on January 3, 1974 at 211-212. Since these exhibits have not been properly authenticated they have not been relied upon in any way by the Court.

of a "call" in early 1973 over part of one hundred twenty-five million Liquigas shares which were held beneficially by an Italian entity known as Coil Finanzieria. By exercising this "call", Ursini obtained his ninety million shares of Liquigas stock. Ronson suggests that Coil Financiere, the alleged Swiss parent of Coil Finanzieria, was indirectly controlled by Sindona through his interest in an entity described only as "Finabank". Ronson then concludes that Sindona must be the "secret" person in control of Liquigas since he supplied Ursini with the funds for Ursini's exercise of the "call".

The record does not support Ronson's theories. First, Sindona has sworn by affidavit that he never had any interest, direct or indirect, in Coil Financiere, and more importantly, that he never had any interest, direct or indirect, in any of the ninety million shares registered in the name of Servizio Italia nor any other shares of Liquigas. Sindona also denies that he provided Ursini with the funds to buy Liquigas shares.[31] Second, it would not be logical or prudent for a person such as Sindona to part with thirty-two million dollars for control of Liquigas shares through a "front" man such as Ursini without a written agreement and/or a proper recording of his interest or lien on the stock ledger and certificates.[32] Indeed plaintiff's own expert

---

[31] Sindona's affidavit of December 13, 1973, Item 40 on page 5 of the Stipulation of Record. Ronson probably could have examined Sindona about the Coil entities when deposing him in June, 1973 because a few days later, when deposing Ursini, counsel for Ronson inquired about Coil Financiere, a Swiss company. Deposition of Ursini, June 22, 1973, Item 13 on page 6 of the Stipulation of Record at 96-106; *see also*, Transcript of Hearing on January 3, 1974 at 222-224 (Defendants' summary).

[32] Discovery has not produced any writing which suggests Sindona has agreed that Ursini shall act as his "front" man in controlling Liquigas. The stock certificates of Ursini and the stock

conceded that he would not advise a client of his to rely upon only an oral understanding to protect such a valuable interest in the stock against third parties.[33] Finally, if Sindona were the "secret" person in control, it would be illogical that he take part in the offer by introducing counsel and conducting meetings in his offices. Such actions could hardly be effective to protect any alleged "secret" control of Liquigas.

Having reviewed all the evidence and the Restatement, the plaintiff has failed to establish that Sindona is a control person of Liquigas. The evidence supports the conclusion that Ursini, not Sindona, controls Liquigas. Ronson's hypotheses do not logically suggest that Sindona is in control and certainly do not overcome the evidence supporting Ursini's claim of control. Accordingly, it is the opinion of this Court that plaintiff has failed to establish a violation of Section 14(e) with respect to its allegations that Sindona or any persons or entities other than Ursini control Liquigas.

III

An important claim by Ronson is that the defendants have failed to disclose adequately or have misrepresented the foreign law or legal controls which may apply to the defendants in the event the tender offer is successfully consummated. The law applicable to such a claim is found in Judge Pierce's excellent opinion in *General Host Corpora-*

---

ledger of Liquigas do not reveal any lien or interest in Ursini's shares. See note 17, *infra*. Plaintiff's expert has had several opportunities to inspect the Liquigas stock ledgers since he purchased shares of Liquigas in the summer of 1973. Transcript of Hearing on January 2, 1974 at 34-36.

[33] Transcript of Hearing on January 2, 1974 at 145-152, esp. 146, 151.

tion v. *Triumph American, Inc.*, 359 F.Supp. 749, 758 (S.D. N.Y. 1973) where the court stated that foreign legal controls

> . . . particularly when they differ in extent and kind from controls the U.S. investor has come to expect from the U.S. Government in relation to domestic corporations, are matters which should be called to the attention of shareholders in a tender offer.

In this case the defendants have disclosed the foreign law problems. Restatement at 17-18. The Restatement describes each contested point of foreign law and the opinions of counsel for the defendants and counsel for Ronson. The parties have attempted to persuade this Court of the merit of their respective opinions on the application of Italian and Swiss law by a "battle of legal experts".

It should be obvious that this Court need not decide points of Italian or Swiss law, but only whether these foreign legal questions have been fully and fairly called to the attention of the Ronson stockholders. After reviewing the Restatement and the evidence, it is the opinion of this Court that the defendants have complied with the Williams Act with respect to these questions of foreign law.

For example, Ronson contends that the defendants, under Italian corporate law, may not invest in Liquifin and Ronson without prior approval from the Italian Ministry of Foreign Trade. Restatement at 17. The Restatement clearly describes that in the opinion of Ronson's counsel, such approvals "would be difficult to obtain". The Restatement then explains that the opinion of Liquigas' counsel is to the contrary. In their view, such prior approvals are unnecessary because "these investments were from sources outside of Italy" and only apply to Italian residents.

Another contention of Ronson is that the effect of a United States withholding tax together with an Italian in-

come tax would cause the defendants to hold Ronson dividends "to a minimum" in order to minimize taxes. In the Restatement, the defendants admit that no consideration has been given to any change in Ronson's dividend policy, but that if they are "in a position to control such policy . . . all appropriate factors" will be considered, including the fiduciary obligations to minority stockholders of Ronson. Restatement at 18.

In the next paragraph, the dispute over the effect of Italian and Swiss tax law on the sale by Liquimportex of the forty-nine percent interest in Liquipar to Capitalfin is discussed. Again the Restatement points out that Ronson's counsel believes that substantial foreign taxes must be imposed on this transaction while Liquigas' counsel believes that these taxes do not apply. However, the Restatement clearly states that "any taxes which may be found to be due and owing will be paid." Restatement at 18. Presumably, although it is not so stated, this declaration about this particular tax problem could apply to the other tax matters as well.

In view of these full revelations of the legal opinions of counsel for both sides and the factual bases for these opinions on disputed points of foreign law, it cannot be said that the Ronson stockholders have been denied information required by the Williams Act. Also, the Restatement discloses, as best it can at this time, the offeror's intentions to deal with these legal problems should the tender offer be consummated. Therefore, the Court concludes that the defedants have not violated Section 14(e) in the Restatement with respect to applicable foreign legal controls.[34]

---

[34] Plaintiff has also raised the spectre of certain Italian stockholder suits in the Italian courts. These foreign suits which, at this time, apparently have not proceeded beyond filing of com-

IV

Another claim of Ronson is that the defendants have failed to disclose adequately the substantial questions of federal administrative law which apply to this tender offer. In the preliminary stages of this litigation, the tender offer misleadingly treated the problems arising under the Federal Aviation Act and the Federal Communications Act as if they were probably subject to resolution without divestiture of Ronson's heliocopter and defense subsidiaries. *Ronson, supra,* 483 F.2d at 850. When reviewing this claim, the Court of Appeals stated:

> . . . we agree with defendants that clearances from the several administrative agencies involved need not be secured prior to a final tender offer . . . 483 F.2d 850-851.

Plaintiff now argues that when the Court of Appeals used the term "tender offer" it meant only that a final solicitation of shares could occur prior to the completion of the administrative proceedings. Plaintiff argues that the Court of Appeals did not authorize consummation of the offer before final resolution of the administrative legal questions. Plaintiff's view is supported by the suggestion in that opinion that courts should be careful to avoid consummation of a tender offer if it would become difficult to "unscramble" the corporate "eggs".

Although the opinion of the Court of Appeals could possible be construed as plaintiff suggests, this Court does not

---

plaints, seem remote and insignificant to the material facts of this tender offer and need not be discussed in the offer. In fact, defendants offered some evidence to show that several of these suits have already been withdrawn. Transcript of Hearing on January 3, 1974 at 152-157, 201.

interpret the term "tender offer" so narrowly. In the very next paragraph, the Court of Appeals applied the language of *Sonesta, supra* to this case by stating

> "preliminary relief does not, in assuring that the offer will be lawfully made, sacrifice the legitimate desires of shareholders to accept the offer. *If the offeror is subsequently vindicated after a trial on the merits, the offer may be renewed.* Thus, in the normal situation, when it appears likely that the offer may contain materially misleading statements or omissions as made, the interest of the shareholders and of the public in full disclosure of relevant circumstances renders *preliminary injunctive relief an appropriate method of remedying the deficiencies in disclosure before the offer is consummated.*" (Emphasis supplied.) 483 F. 2d at 851.

When these two paragraphs are read together, it seems fairly evident that the Court of Appeals did not intend for this Court to await the final administrative decisions before determining whether to continue or remove the restraints on this offer. If the offeror is vindicated after a trial on the merits or the deficiencies in the offer are corrected,[35] the tender offer may proceed to consummation provided that removal of a preliminary injunction in a particular case would further the Congressional purposes of the Williams Act.[36]

---

[35] *Sonesta, supra* at 255. *Ronson,* Opinion of August 15, 1973 at 6-7.

[36] *Corenco Corp.* v. *Schiavone & Sons, Inc.*, —— F.2d ——, CCH Fed. Sec. L.Rep. Paragraph 94,196 at 94,840, 94,844, (2d Cir. October 26, 1973) suggests in dicta that even if the deficiencies in the tender offer are corrected, permanent injunctive relief may still be an appropriate remedy to insure future compliance with the Williams Act. Such a drastic remedy should be utilized only

In this case the federal administrative legal problems are discussed. Restatement at 3. The Restatement fully sets forth the facts and intentions of the offeror concerning its proposal to comply with the Federal Aviation Act by means of a trust agreement with the First National Bank of Washington, D.C. as the trustee. The Restatement discloses the status of the proceedings before the CAB regarding Ronson Helicopters, Inc. and the total sales and net losses of this subsidiary from the final quarter of 1965 through the first five months of 1973. The Restatement also declares that the outcome of the administrative bodies are not predictable, and that if the trust arrangement is not approved, certain Ronson subsidiaries may be disposed of at the "best terms available". Restatement at 5 n.1, 6 n.2, 7.

Similarly, the Restatement informs the stockholders of the potential effects on Ronson if the FCC does not grant the approvals needed to continue operation of the various Ronson radios. Restatement at 8.

The Restatement candidly discusses facility security clearances which are necessary to the Ronson hydraulics subsidiaries in their business with the United States Department of Defense. Also provided is the sales and pretax income of the hydraulics subsidiaries as indicated by the Court of Appeals. *Ronson, supra,* 483 F.2d at 851; Restatement at 10. The offeror warns that if the necessary facility security clearances cannot be obtained from the Defense Department, the defense business "would have to be terminated or the Hydraulics Subsidiaries might have to be sold".

---

where the offeror willfully attempted to withhold information from the target company's stockholders. However, the district court has the equitable power to expressly limit the duration of a permanent injunction until the defendant offerors make full disclosures. *Id.*, at 94, 845.

After a full review of all the evidence and the Restatement, the disclosures concerning the federal administrative legal problems do not violate Section 14(e). The intentions of the offeror and the facts behind those intentions have been revealed. Of course the defendants have a "continuing obligation" to insure that the Ronson stockholders are aware of the important administrative developments, if any, since September, 1973.

V

Certain other defendants also seek relief. Defendants Franklin New York Corporation and Franklin National Bank move to dismiss the complaint for failure to state a claim upon which relief can be granted and to dismiss the complaint on the merits. Previously these defendants moved to dismiss the action for lack of venue under the National Bank Act, 12 U.S.C. Section 94. That motion as well as the motion at the preliminary stage to dismiss the complaint for failure to state a cause of action was denied by this Court and affirmed by the Court of Appeals. *Ronson Corporation* v. *Liquifin Aktiengesellschaft,* 483 F.2d 852, 855 (3d Cir. 1973).

These defendants raise compelling arguments in their brief for dismissal based upon deficiencies in the pleadings. However, having examined the proofs in support of plaintiff's claims for permanent injunctive relief, there is no evidence of any wrongdoing by either Franklin New York Corporation or Franklin National Bank that would justify permanent injunctive relief against them.[37] Franklin National Bank has acted merely as a depository for the funds to pay for the tendered Ronson shares. As for the interest

[37] *See* Transcript of Hearing on January 3, 1974 at 218.

of defendant Sindona in these defendants, even if Sindona were subject to permanent injunctive relief, plaintiff has not demonstrated that either of these defendants should be enjoined solely because Sindona is a shareholder indirectly in Franklin New York Corporation. There is no evidence that these defendants have conspired with Sindona for any unlawful purpose. Consequently, there are no grounds for permanent injunctive relief against defendants Franklin National Bank and Franklin New York Corporation.

These defendants also move that plaintiff's claims for damages be dismissed at this time. As previously indicated, the Court at this stage is only concerned with the claims for injunctive relief and not with any claims for damages.[38] Accordingly, the motion of these defendants to dismiss the claims for damages will be denied without prejudice to renew at a later stage of these proceedings.

The evidence also fails to justify any further injunctive relief against defendants D. F. King & Company, Servizio Italia, Kuhn, Loeb & Company;[39] and Philip Marfuggi.

The evidence in this case demonstrates that plaintiff Ronson Corporation has failed to prove that it is entitled to permanent injunctive relief under Section 14(e). The preponderance of the evidence shows that the Restatement of the tender offer fully informs the Ronson stockholders of the material facts without omission or misrepresentation. The Restatement adequately discloses the persons behind and the methods used to fund the offer, the effect of foreign laws on the offer, and the federal administrative legal problems involved in the offer. Consequently, not only should plaintiff's prayer for permanent injunctive relief be denied,

---

[38] *See* note 7 *infra*.

[39] For a discussion of an underwriter's liability in tender offers *see Chris-Craft, supra* at 370, 403.

but the preliminary restraints now in effect against the offer should be dissolved.

Of course when these restraints are removed by order of this Court, the defendants must show that they have corrected the minor discrepancies in the Restatement as it is now written. The passages referring to these Court proceedings and the administrative proceedings must be revised to reflect the significant developments since September, 1973. The figures relating to the amount of shares to be purchased and the price per share must be adjusted throughout the Restatement in accordance with amendment to the 13D Schedule filed with the SEC. The proper identification of the Liquipar Company must be included as well as the correction of footnote 8 of the Restatement which improperly refers to "preferred" shares of Pozzi.

Accordingly, plaintiff's application for permanent injunctive relief must be denied, and defendants' motion to vacate the preliminary injunction must be granted. Counsel, with notice, shall submit an order immediately.

The foregoing opinion shall constitute this Court's findings of fact and conclusions of law under F.R.Civ.P. 52(a).

Dated: January 11, 1974.

Appendix E

Opinion, United States Court of Appeals, for the Third Circuit, Filed April 19, 1974

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 74-1085

RONSON CORPORATION,

Appellant,

v.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 785-73)

Argued April 3, 1974

Before:

KALODNER, VAN DUSEN and WEIS,

Circuit Judges.

Raymond Falls, Esquire
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

McCarter & English
550 Broad Street
Newark, New Jersey
Attorneys for Appellant

Donald J. Zoeller, Esquire
Mudge, Rose, Guthrie & Alexander
20 Broad Street
New York, New York 10005

Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Of Counsel:
Robert S. Rifkind and
Paul C. Saunders
One Chase Manhattan Plaza
New York, New York 10005

Stryker, Tams & Dill
33 Washington Street
Newark, New Jersey 07102

Cravath Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005

Of Counsel:
Milton Kunen
Mark C. Zauderer, of
Kaye, Scholer, Fierman, Hays & Handler
425 Park Avenue
New York, New York

Hannoch, Weisman, Stern & Besser
744 Broad Street
Newark, New Jersey

Attorneys for Appellees

OPINION OF THE COURT

(Filed April 19, 1974)

PER CURIAM:

After careful review of this case, we conclude that the judgment of the district court should be affirmed. In so doing we wish to emphasize the limited nature of the roles that the district court and this court are called upon to pursue in a matter of this nature.

Briefly stated, the plaintiff has contended that the defendants have failed to make adequate disclosure of certain factual data as required by the terms of the Williams Act, 15 U.S.C. §78m, n. After a number of amendments to the tender offer were made during the course of the proceedings in the district court, the trial judge concluded that the defendants had adequately met the objections asserted by the plaintiff.

The law requires disclosure of certain basic facts to the shareholders to enable them to make an informed decision to sell or hold their stock. Obviously, that choice is a matter of individual judgment. In no way should our action be taken as approval or disapproval of the tender offer, or of the wisdom of acceptance or rejection by the shareholders. Such functions are not entrusted to the courts.

We recognize that in a case of this nature involving as it does the extremely complex relationships between numerous foreign corporations and individuals, there may be practical problems connected with the production of important information. Generally the burden of proof is on the plaintiff. However, in some circumstances the burden of going forward with the evidence may shift so as to make it necessary that the principal controlling individual of a foreign entity making the tender offer should be called to testify in

person before the trial court. Similarly, broad discovery must be granted in this type of case to compensate for the lack of available data subject to the subpoena powers of the court. Our review of the district court's rulings in meeting those situations here does not disclose error.

The judgment of the district court will be affirmed.[1] The mandate or certified judgment in lieu of mandate shall issue forthwith.

[1] The motion by appellees for enforcement of the February 15, 1974 Order of this Court and the motion by appellant to supplement the record filed March 15, 1974 and related papers later filed are denied as moot, in view of the agreement of counsel, stated during oral argument, that the dispute underlying such motions would be resolved by counsel.

Appendix F

Order Sur Petition for Rehearing, United States Court of Appeals for the Third Circuit, Filed May 7, 1974

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 74-1085

RONSON CORPORATION,

Appellant,

v.

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS, S.p.A., KUHN, LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI and MICHELE SINDONA,

Appellees.

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge,* KALODNER, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER and WEIS, *Circuit Judges.*

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges

who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

(Signature illegible)
Judge

Dated: May 7, 1974

Appendix G

The Williams Act, 15 U.S.C. §78m(d) and (e); 78n(d), (e) and (f) (1970)

SECURITIES—CORPORATE EQUITY OWNERSHIP—DISCLOSURE

PUBLIC LAW 90-439; 82 STAT. 454

[S. 510]

An Act providing for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 12(i) of the Securities Exchange Act of 1934[12] is amended by striking out "sections 12, 13, 14(a), 14(c), and 16" and inserting in lieu thereof "sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16".

Sec. 2. Section 13 of the Securities Exchange Act of 1934[13] is amended by adding at the end thereof the following new subsections:

"(d) (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of

---

[12] 15 U.S.C.A. § 78*l*(i).

[13] 15 U.S.C.A. § 78m.

this title or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner or more than 10 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

"(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3 (a) (6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

"(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the

issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its asset to or merge it with any other persons, or to make any other major change in its business or corporate structure;

"(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

"(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profit, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

"(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an

issuer, such syndicate or group shall be deemed a 'person' for the purposes of this subsection.

"(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

"(5) The provisions of this subsection shall not apply to—

"(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

"(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

"(C) any acquisition of an equity security by the issuer of such security;

"(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

"(e) (1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 12 of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940, to

purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

"(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer."

Sec. 3. Section 14 of the Securities Exchange Act of 1934[14] is amended by adding at the end thereof the following new subsections:

"(d) (1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to

[14] 15 U.S C.A. § 78n.

section 12 of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 10 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

"(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an

issuer, such syndicate or group shall be deemed a 'person' for purposes of this subsection.

"(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

"(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

"(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro

rata, disregarding fractions, according to the number of securities deposited by each depositor. The provision of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

"(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

"(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

"(A) proposed to be made by means of a registration statement under the Securities Act of 1933;

"(B) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

"(C) by the issuer of such security; or

"(D) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

"(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

"(f) If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 13 of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders."

Approved July 29, 1968.

Appendix H

Securities and Exchange Commission Order Dated May 31, 1974, Directing Private Investigation and Designating Officers to Take Testimony

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

May 31 1974

IN THE MATTER OF

RONSON CORPORATION

File No. HO-715

I.

The Commission's public files disclose that:

A. Ronson Corporation ("Ronson") is a New Jersey corporation whose shares of common stock are registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") and are listed on the New York Stock Exchange, a national securities exchange.

B. Liquifin, A.G., an entity organized under the laws of Liechtenstein, is a wholly-owned subsidiary of Liquigas, S.p.A., an Italian corporation with its principal offices in Milan, Italy. Liquifin, A.G. filed a Schedule 13D with the Commission in connection with a tender offer for Ronson

common stock pursuant to Section 14(d) of the Exchange Act.

C. Liquifin, A.G. filed preliminary proxy material with the Commission with respect to a proposed meeting of Ronson shareholders scheduled for June 13, 1974.

II.

The members of its staff have reported information to the Commission which tends to show that:

A. Liquifin, A.G. may have made false and misleading statements in a Schedule 13D and amendments thereto filed with the Commission with respect to Ronston stock.

B. Liquifin, A.G. may have filed proxy material containing false and misleading statements with respect to the proposed meeting of Ronson shareholders scheduled for June 13, 1974.

C. Liquifin, A.G. and other persons may have made false and misleading statements to the public in connection with its tender offer for Ronson common stock.

III.

The Commission, having considered the staff report, deeming such acts and practices, if true, to be in possible violation of Sections 10(b), 14(a) and 14(d) of the Securities Exchange Act of 1934 and Rules 10b-5, 14a-9 and 14d-1 thereunder finds it necessary and appropriate and hereby

ORDERS, pursuant to the provisions of Section 21(a) of the Securities Exchange Act of 1934 that a private investigation be made to determine whether the aforesaid persons have engaged or are about to engage in any acts or practices of similar purport or object and to obtain infor-

mation to serve as a basis for determining whether to propose rules and regulations under the federal securities laws and whether to recommend legislation concerning any matters to which such laws relate, and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934 that for the purposes of such investigation, Richard S. Kraut, John G. Carleton, Michael F. Perlis, Stephen Hershkowitz and Ingrid Nelson, and each of them is designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

/s/ GEORGE A. FITZSIMMONS

George A. Fitzsimmons
Secretary

APPENDIX I

Letter, Dated June 4, 1974, Securities and Exchange Commission to Raffaele Ursini

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

(Emblem)

DIVISION OF
CORPORATION FINANCE

June 4, 1974

Mr. Raffaele Ursini
Managing Director and President
Liquifin A.G.
P. O. Box 34771
Vaduz, Liechtenstein

Re: Ronson-Liquifin Proxy Contest

Dear Mr. Ursini:

With respect to the proxy material filed in May, 1974 by Liquifin A.G. ("Liquifin") pertaining to the proxy contest with the present management of Ronson Corporation (File No. 1-1031), certain facts concerning the relationship of Mr. Michele Sindona to Liquifin, and the financing of Liquifin's tender offer have come to the attention of the staff. These facts raise serious questions as to whether or not Mr. Sindona is a "participant" as defined by Rule 14a-11(b) of the Securities Exchange Act of 1934 (the "Act") in the proxy solicitation of Ronson shareholders and as to the source of Liquifin's funds for its tender offer ended May 10, 1974.

It is noted that counsel for Liquifin has expressed their opinion that Mr. Sindona is not a participant either individually or in concert with others in the solicitation. Further, they have stated that the facts surrounding the financing, as set forth in Appendix A to their proxy statement, are true and complete.

As discussed with your counsel Mr. Gillispie of the law firm Mudge, Rose, Guthrie & Alexander, the staff did not review or clear the proxy material designated as Appendix A to your proxy material nor the statements made as to Mr. Sindona's relationship with Liquifin. The above named counsel indicated that in lieu of furnishing supporting data required by the staff in order to process the material, they would proceed at their own peril without such review and clearance.

In consideration of the staff's position on the matters set forth above, the issuers are aware that under the circumstances they are proceeding at their own risk.

As you and your counsel are aware, the use of a proxy obtained in violation of the proxy rules may be prohibited by a court of competent jurisdiction.

Sincerely,

/s/ C. A. Davies
C. A. Davies
Assistant Director

cc: Mudge, Rose, Guthrie & Alexander
20 Broad Street
New York, N. Y.

LIBRARY
SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
SEP 5 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-74

RONSON CORPORATION,

Petitioner,

against

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., D. F. KING & CO., INC., SERVIZIO ITALIA S.F.p.A., PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA

DONALD J. ZOELLER
20 Broad Street
New York, New York 10005
(212) 422-6767
Counsel for the above Respondents

Of Counsel:

CARPENTER, BENNETT & MORRISSEY
MUDGE ROSE GUTHRIE & ALEXANDER

TABLE OF CONTENTS

	PAGE
Counterstatement of the Case	2
Certiorari Should Not Be Granted	4
1. This Case Turns On Questions of Fact, Not Questions of Law	4
2. Ronson's Discovery Challenges are Addressed to Discretionary Rulings, Not Substantial Legal Issues	4
3. This Case Does Not Present An Issue of Burden of Proof	5
4. This Case Presents No Williams Act Issue which Requires This Court's Attention	7
Conclusion	8

Table of Authorities

Cases:

Butler Aviation Int'l Inc. v. *Comprehensive Designers, Inc.*, 425 F.2d 842 (2d Cir. 1970)	7
Corenco Corp. v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973)	7
Dolgow v. *Anderson*, 53 F.R.D. 661 (E.D.N.Y. 1971)	5
Electronic Specialty Co. v. *International Controls Corp.*, 409 F.2d 937 (2d Cir. 1969)	7
Missouri Portland Cement Co. v. *Cargill, Inc.*, CCH TRADE REG. REP. ¶ 75,113 (2d Cir. 1974)	7
New Dyckman Theatre Corp. v. *Radio-Keith-Orpheum Corp.*, 20 F.R.D. 36 (S.D.N.Y. 1955)	5
Nicholson File Co. v. *H. K. Porter Co.*, 341 F. Supp. 508 (D.R.I. 1972)	7

PAGE

Ronson Corp. v. *Liquifin A. G.*, 483 F.2d 846 (3rd Cir. 1973), *on remand* 370 F. Supp. 597 (D.N.J.), *aff'd*, 493 F.2d 1401 (3rd Cir. 1974), *rehearing en banc denied*, No. 74-1085 (3d Cir., May 7, 1974) 3, 8

Sonesta Int'l Hotels Corp. v. *Wellington Assoc.*, 483 F.2d 247 (2d Cir. 1973) 7

Swanner v. *United States*, 406 F.2d 716 (5th Cir. 1969) 5

Tiedman v. *American Pigment Corp.*, 253 F.2d 803 (4th Cir. 1958) 5

Rules:

Fed. R. Civ. P. 52(a) 4

Other Authorities:

8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE §2006, at 34-35 (1970) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-74

RONSON CORPORATION,

Petitioner,

against

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., D. F. KING & CO., INC., SERVIZIO ITALIA S.F.p.A., PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA

Respondents Liquifin Aktiengesellschaft ("Liquifin"), Liquigas S.p.A., D. F. King & Co., Inc., Servizio Italia S.F.p.A., Philip Marfuggi, Raffaele Ursini and Michele Sindona submit the following brief in opposition to Ronson Corporation's ("Ronson") Petition for Certiorari.

Counterstatement of the Case

This suit was brought by Ronson to block Liquifin's cash tender offer for a majority of Ronson's outstanding common stock. Among other things, Ronson asserted in its complaint that the tender offer violated the Williams Act, the antitrust laws, various federal regulatory statutes, and the common law applicable to fiduciary duties of shareholders. During the course of the litigation, Ronson abandoned most of the claims in its multiparagraph grab-bag complaint and now focuses solely on its Williams Act claim.

After two full rounds of discovery, encompassing thousands of pages of depositions and hundreds of documents, and after a full trial on the merits, the United States District Court, in a detailed and well reasoned opinion, rejected all of Ronson's claims, including its Williams Act claim, expressly finding that:

> "The preponderance of the evidence shows that the Restatement of the tender offer fully informs the Ronson stockholders of the material facts without omission or misrepresentation." (Pet.App. D p. 77)

The District Court accordingly permitted Liquifin to proceed with its tender offer under a Restated Offer to Purchase expressly approved by the Court in its order of January 16, 1974.

As to the one "issue" that Ronson now points to in its Petition—Ronson's claim that Dr. Raffaele Ursini does not control Liquigas S.p.A., Liquifin's parent company—the District Court, after analyzing the proof, specifically found that

> "[t]he record in this case inevitably leads to the conclusion that only defendant Ursini controls Liquigas." (Pet. App. D p. 62)

Immediately after the District Court's decision, Ronson applied for a stay pending appeal, which both the Third Circuit and Mr. Justice Brennan denied. The judgment of the District Court was then unanimously affirmed by the Court of Appeals for the Third Circuit. *Ronson Corp.* v. *Liquifin A.G.*, 370 F. Supp. 597 (D.N.J.), *aff'd*, 493 F.2d 1401 (3d Cir. 1974). (Pet.App. E pp. 79-82) and Ronson's petition for rehearing *en banc* by said Court of Appeals was denied on May 7, 1974. (Pet.App. F pp. 83-84)

Thereafter, Liquifin's tender offer for Ronson shares was completed in May 1974, at which time Liquifin had purchased and paid for approximately 36% of the outstanding common shares of Ronson, pursuant to the published Restated Offer to Purchase as specifically approved by the District Court after trial.

Without citing any specific respects in which it contends that the Liquifin Restated Offer to Purchase was false, incomplete or misleading, Ronson now asks this Court to set aside the tender offer on the basis of certain allegedly erroneous findings of fact and discretionary discovery rulings made by the District Court. We submit that, far from raising the kind of serious and substantial issues of law and policy calling for review by this Court, the Ronson petition raises no issues of law whatever. This Court should not be called upon to review routine factual findings and normal pre-trial discovery rulings of the District Court, which have already been carefully reviewed by the Court of Appeals and unanimously found to be without error. (Pet.App. E pp. 81-82)

Certiorari Should Not Be Granted

1. This Case Turns On Questions Of Fact, Not Questions of Law

A careful reading of Ronson's Petition reveals that, despite its protestations concerning Williams Act violations, it has not pointed to any purportedly inadequate disclosures in Respondents' final, court-approved tender offer materials. The closest that Ronson comes to enumerating such an issue is its footnote statement that "[t]he source of Ursini's funds remains a mystery." (Pet. p. 10 n.*)*

Obviously, however, the only relevance of this point is its bearing on the question of who controls Liquigas S.p.A., Liquifin's parent. But the district court specifically, and correctly, held that "the record as a whole has not established Ronson's suspicions and theories as provable facts. The preponderance of the evidence clearly demonstrates that defendant Ursini controls Liquigas." (Pet.App. D p. 64)

Consequently, Ronson's rhetoric notwithstanding, it is clear that the issues Ronson seeks to raise are issues of fact, not law. Factual findings cannot be set aside unless they are clearly erroneous, Fed. R. Civ. P. 52(a), and issues of that type certainly do not merit this Court's attention, especially when a Court of Appeals has unanimously upheld those findings.

2. Ronson's Discovery Challenges are Addressed to Discretionary Rulings, Not Substantial Legal Issues

One of Ronson's chief arguments is that it was not allowed all the discovery it requested. (Pet. pp. 9-10) But Ronson fails to show how it was purportedly injured by

---

* Unsubstantiated statements with similar implications appear at pages 4-5 of the Petition.

any of the District Court's discovery rulings, and the fact of the matter is that Ronson was granted exhaustive discovery in this case.

The district courts are vested with broad discretion to direct the course of discovery, and their discovery rulings should not be set aside unless they constitute an abuse of discretion and adversely affect a substantial right of one of the parties. *See, e.g., Swanner* v. *United States*, 406 F.2d 716, 719 (5th Cir. 1969); *Tiedman* v. *American Pigment Corp.*, 253 F.2d 803, 808 (4th Cir. 1958); *Dolgow* v. *Anderson*, 53 F.R.D. 661, 664 (E.D.N.Y. 1971); *New Dyckman Theatre Corp.* v. *Radio-Keith-Orpheum Corp.*, 20 F.R.D. 36, 37 (S.D.N.Y. 1955). *See generally* 8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 2006, at 34-35 (1970).

The discovery questions in this case were properly decided and involved purely routine denials of "repeat" discovery requests and denials of over-broad discovery requests which Ronson was afforded an opportunity to but failed to justify to the District Court. These discovery rulings were reviewed on appeal, and the Third Circuit, while acknowledging that "broad discovery must be granted in this type of case", expressly ruled that:

> "Our review of the district court's rulings in meeting these situations here does not disclose error." (Pet. App.E p. 82)

Accordingly, Ronson's claims on discovery rulings do not present significant issues meriting review by this Court.

3. This Case Does Not Present An Issue of Burden of Proof

Ronson's argument that this case turned on a misapplication by the District Court of the burden of proof rules is completely without foundation. As to every factual issue

in the case, the District Court specifically found that the preponderance of the evidence supported Liquifin's position. For example, the Court found that:

> "Testimony at trial, extensive depositions and production of documents demonstrate that the funds for this tender offer were in fact provided through the Liquimportex to Capitalfin sale of Liquipar stock." (Pet.App.D p. 60)
>
> * * * *
>
> "The record in this case inevitably leads to the conclusion that only defendant Ursini controls Liquigas." (Pet.App.D p. 62)
>
> * * * *
>
> "The preponderance of the evidence clearly demonstrates that defendant Ursini controls Liquigas." (Pet.App.D p. 64)
>
> * * * *
>
> "The preponderance of the evidence shows that the Restatement of the tender offer fully informs the Ronson stockholders of the material fact without omission or misrepresentation. The Restatement adequately discloses the persons behind and the methods used to fund the offer, the effect of foreign laws on the offer, and the federal administrative legal problems involved in the offer." (Pet.App. D p. 77)

For other specific findings that the evidence supported Liquifin's position see Pet. App. D pp. 61, 67, 69, 70, 72, 75, and 76.

Thus the outcome in the Court below was not affected by the allocation of burden of proof, and there is no issue of law on burden of proof warranting review by this Court.

4. This Case Presents No Williams Act Issue Which Requires This Court's Attention

The only other question Ronson points to in attempting to justify its request for certiorari is its claim that amendments of a tender offer *ipso facto* necessitate permanent injunctive relief. This argument rests entirely upon a *dictum* in *Corenco Corp.* v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973), in which the Second Circuit noted that, in some future case, a set of facts might exist which might justify considering an argument that repeated, willful non-disclosures call for the grant of an injunction for a short period, as a punitive measure. *Id.* at 214.* No court has ever granted such relief.

In fact, all of the courts, including the Second Circuit, which have considered the type of relief appropriate in Williams Act cases have agreed that the proper course is to allow a tender offer to proceed after the material facts have been disclosed. *See, e.g., Missouri Portland Cement Co.* v. *Cargill, Inc.*, CCH TRADE REG. REP. ¶ 75,113, at 96,964 (2d Cir. 1974); *Corenco Corp.* v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973); *Sonesta Int'l Hotels Corp.* v. *Wellington Assoc.*, 483 F.2d 247 (2d Cir. 1973); *Butler Aviation Int'l Inc.* v. *Comprehensive Designers, Inc.*, 425 F.2d 842 (2d Cir. 1970); *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F.2d 937 (2d Cir. 1969); *Nicholson File Co.* v. *H. K. Porter Co.*, 341 F. Supp. 508 (D.R.I. 1972). This type of relief, patterned on Second Circuit decisions, was adopted by the District Court and

---

* Since there was no evidence of wilful non-disclosure in the present case, since the result of the preliminary injunction herein was to hold up the tender offer for almost eight months, and since the tender offer has now been completed and shareholders have already sold their shares on the basis of a Restated Offer to Purchase found to be fully fair and accurate, this case clearly does not present the type of hypothetical situation envisioned in the *Corenco* dictum as possibly calling for some delay of the tender offer as a punitive measure.

the Court of Appeals in the present case. *Ronson Corp.* v. *Liquifin A.G.*, 483 F.2d 846 (3d Cir. 1973), *on remand* 370 F. Supp. 597 (D.N.J.), *aff'd*, 493 F.2d 1401 (3d Cir. 1974), *rehearing en banc denied*, No. 74-1085 (3d Cir., May 7, 1974).

Furthermore, injunctive relief lies within the sound discretion of a district court. Here the District Court's exercise of its discretion was unanimously affirmed by the Court of Appeals. In fact, the argument Ronson now makes was considered and rejected by both Courts after full review of the comprehensive record before them.

There are no facts stated in the Petition which justify a conclusion that the Court of Appeals was wrong and that the District Court abused its discretion; indeed, no such facts exist. Certainly this Ronson contention is not a major issue justifying review by this Court.

CONCLUSION

For the foregoing reasons, Ronson's Petition for a Writ of Certiorari should be denied.

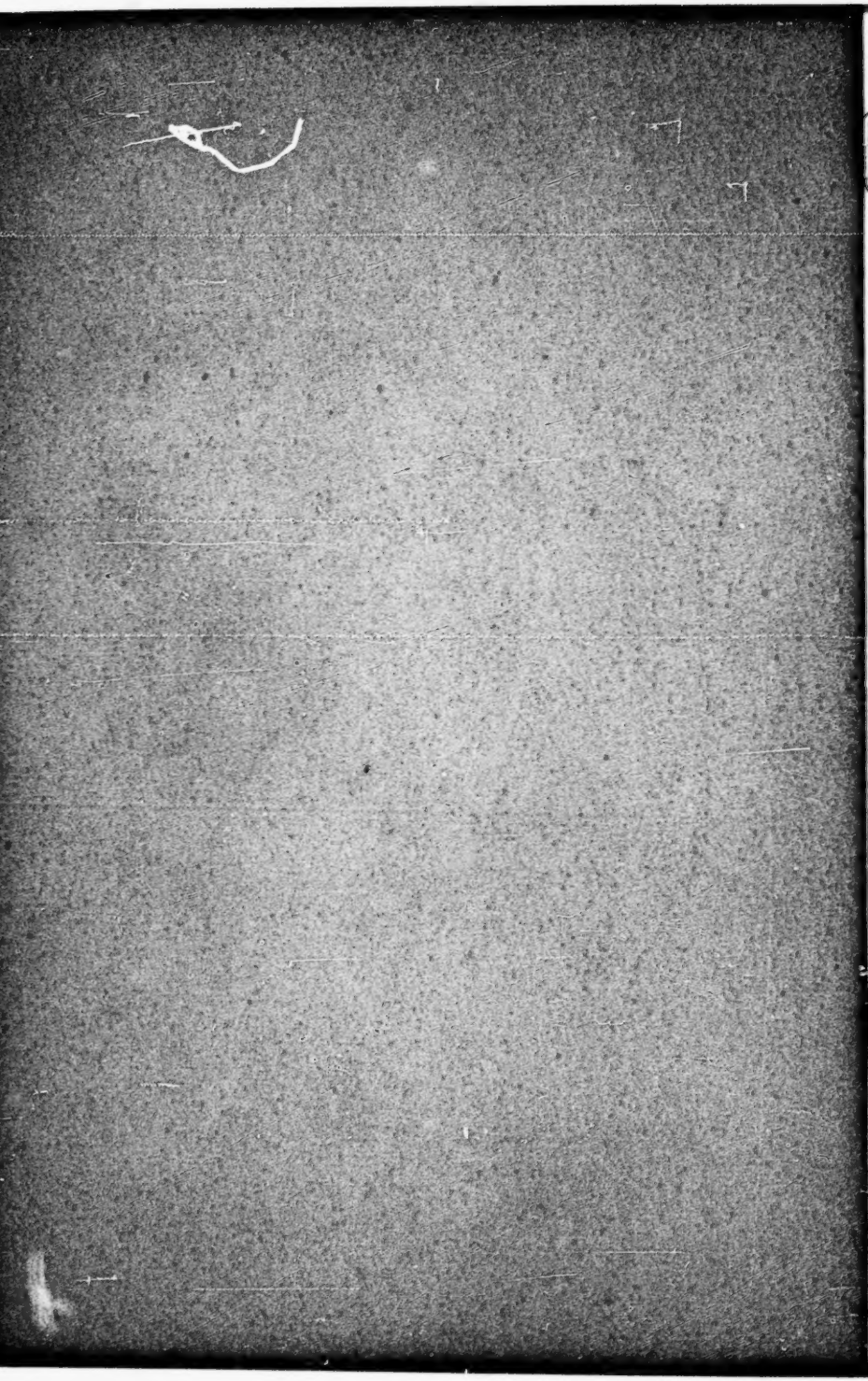
Dated: September 4, 1974

Respectfully submitted,

DONALD J. ZOELLER
20 Broad Street
New York, New York 10005
(212) 422-6767
Counsel for Respondents Liquifin Aktiengesellschaft, Liquigas S.p.A., D. F. King & Co., Inc., Servizio Italia S.F.p.A., Philip Marfuggi, Raffaele Ursini and Michele Sindona

Of Counsel:

CARPENTER, BENNETT & MORRISSEY
MUDGE ROSE GUTHRIE & ALEXANDER



FILED
SEP 5 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-74

RONSON CORPORATION,

Petitioner,

—against—

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & CO., D. F. KING & CO., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI AND MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT KUHN, LOEB & CO. IN OPPOSITION

ROBERT S. RIFKIND,
One Chase Manhattan Plaza,
New York, N. Y. 10005
Attorney for Respondent Kuhn, Loeb & Co.

PAUL C. SAUNDERS,
CRAVATH, SWAINE & MOORE,
One Chase Manhattan Plaza,
New York, N. Y. 10005
Of Counsel.

September 5, 1974.

IN THE

Supreme Court of the United States

OCTOBER TERM

No. 74-74

RONSON CORPORATION,

Petitioner,

—against—

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI, AND MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT KUHN, LOEB & CO. IN OPPOSITION

Respondent Kuhn, Loeb & Co. ("Kuhn Loeb") opposes Ronson Corporation's ("Ronson") petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit. Kuhn Loeb was the "dealer-manager" of the cash tender offer in question. None of Ronson's grounds for review is directed to any conduct of Kuhn Loeb.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the court of appeals erred in affirming the denial of a permanent injunction designed to block a cash tender offer where the district court found that:

(1) After seven months of discovery, petitioner failed to prove any of the material allegations of the complaint; and

(2) The offer to purchase, as restated to meet petitioner's objections, fully disclosed the material facts without omission or misrepresentation.

COUNTERSTATEMENT OF THE CASE

On May 31, 1973, Liquifin Aktiengesellschaft ("Liquifin") announced its intention to make a cash tender offer for a controlling interest in Ronson common stock. On June 5, 1973, Ronson commenced this action and obtained an ex parte temporary restraining order. On July 3, 1973, the district court granted a preliminary injunction staying the solicitation and purchase of stock pursuant to the offer. After full and exhaustive discovery, however, Ronson was unable to show that the Restated Offer to Purchase contained material misrepresentations or omissions or was otherwise unlawful in any respect. Accordingly, on January 11, 1974, the district court vacated the preliminary injunction and denied petitioner's application for a permanent injunction. That decision was unanimously upheld by the Third Circuit, which also denied a petition for rehearing and a suggestion for rehearing en banc. Mr. Justice Brennan denied Ronson's application for a stay pending appeal. The offer expired in May, 1974, and Liquifin purchased about 36% of the outstanding common stock of Ronson.

Petitioner makes three claims:

(1) Having failed to make its case at trial, Ronson urges the novel theory that sanctions ought to

be imposed for "repeated disclosure shortcomings" (Pet. p. 6) even assuming that the Restated Offer to Purchase was in all respects complete and accurate;

(2) Ronson was denied some of the discovery it sought; and

(3) Since Ronson was unable to prove that the Offer was misleading or untruthful, the burden at trial ought to have been upon respondents to show that it was not.

The opinion of the district court denying Ronson's application for a permanent injunction (Pet. App. p. 52) effectively and correctly refutes each of those claims.

ARGUMENT

1. Tender offers for corporate stock are not, as Ronson's petition suggests, inherently wicked devices for "raiding" corporations. On the contrary, they can be a means of challenging indolent or incompetent management under whose regime a corporation's income and the price of its stock has fallen to a level below that at which the offeror thinks the corporation could be operated with new management. Far from representing a danger to the corporate community, the tender offer provides a healthy encouragement to incumbent management to be mindful that its incumbency depends on the confidence of its shareholders. A tender offer provides one of the few means "by which investors . . . can . . . oust the present management" of a corporation and, hence, it affords "machinery for discouraging management from deflecting an inappropriate portion of the firm's net income from the shareholders to itself." R. POSNER, ECONOMIC ANALYSIS OF LAW, p. 181 (1972).

The Williams Act, 15 U. S. C. § 78m(d), (e); § 78(d)-(f)(1970), sets forth the guidelines under which tender offers may proceed, and describes the disclosures that must be made by the offeror. It reflects the will of Congress that accurate and complete disclosure of material facts must be made, sufficient to enable stockholders to make an informed investment decision. It is not, and was not intended to be, a tool by which entrenched management can fend off all challengers.

Ronson makes no claim here that the Restated Offer to Purchase was incorrect, misleading, incomplete or otherwise in violation of the dictates of the Williams Act. Rather, Ronson claims that unprecedented procedures ought to be employed here to assure the continued tenure of its incumbent management. Throughout this litigation, Ronson has attempted to pervert the Williams Act into something it was never meant to be, an impenetrable shield behind which management can forever hide.

The record exposes Ronson's tactics. Having obtained a preliminary injunction based on unproven charges that alleged very serious violations of the law, Ronson then used every possible means to forestall the day on which it would be called upon to prove them. For example, it changed attorneys on the eve of trial, and sought a postponement for that reason. It tried to reopen discovery that had already been exhaustively pursued. When that failed, Ronson argued that the burden of proof was on the defendants.

2. Ronson asserts that "the danger of ['takeover'] bids by foreign citizens has been increasingly realized" and urges this Court to consider proposed legislation now pending in Congress that may "restrict foreign investment in the United States" (Pet. p. 6). Those assertions are utterly irrelevant. The operative statute is the Wil-

liams Act. In order to prevail, Ronson had to demonstrate that the Restated Offer to Purchase violated the Williams Act, not bills pending before Congress.

3. Ronson asserts that different rules ought to be applied in tender offers by foreign corporations, and unashamedly states that unlike domestic offerors, foreign offerors operate "beyond the reach of regular court process" and have "little to fear beyond costs of litigation and printing . . ." (Pet. p. 7). Whatever the significance of that claim, it simply bears no relation to the facts. The "foreign" offeror is now in court. It has been in court throughout this litigation. Indeed, it was effectively restrained and thoroughly examined promptly after the commencement of this action; depositions were taken not only in New York and New Jersey, but in Milan and Rome as well. Moreover, Liquifin filed with the Securities and Exchange Commission all of the papers that it was required by law to file. As the district court cogently observed, "throughout these proceedings it has been obvious that the foreign defendants are subject to this nation's securities laws. If they chose not to furnish certain information, they could be faced with a choice between revealing such information or having the lawful restraints of this Court continued against them" (Pet. App. p. 56).

4. Ronson asserts that it was erroneously denied additional discovery before trial. The simple truth is that all of the relevant facts had been revealed from the outset, and Ronson's several teams of lawyers were afforded the widest latitude in attempting to refute them, both in the United States and abroad. In fact, very little of consequence ever resulted from Ronson's discovery efforts. For example, Liquifin did not, as Ronson states, "concede" that Liquifin

was owned by Liquigas; it affirmatively asserted it in the original Offer to Purchase. Similarly, Liquifin did not "concede" that Mr. Ursini controlled Liquigas; it asserted it. Both of those relationships were fully disclosed before the commencement of this action, and have never been disproved.

Among the depositions that Ronson counsel sought to reopen in September 1973 was that of Alvin E. Friedman of Kuhn Loeb. Mr. Friedman was the Kuhn Loeb partner responsible for the management of the tender offer. His deposition was commenced less than twenty four hours after the complaint was filed, and was protracted through five sessions and 298 transcript pages. The final session of the Friedman deposition was held pursuant to the following stipulation:

> "MR. RIFKIND: Mr. Matthews, Mr. Friedman has been deposed on three prior occasions by three different lawyers representing Ronson. Other representatives of Kuhn, Loeb have been deposed on four prior occasions in two cities by, I don't know how many representatives of Ronson. In light of that background, we have agreed to this further and final installment of the deposition of Kuhn, Loeb upon your representation that the interrogation today will be limited to five subjects which you outlined to me; that it would not repeat any of the matters that have been previously taken up and that it could be confined to a period of not more than an hour.
>
> "MR. MATTHEWS: That is true, I think, except with one minor modification. I think we have taken depositions of four Kuhn, Loeb people, Mr. d'Urso, Mr. Gruss, Mr. Zanard and Mr. Friedman." (Friedman dep. 256-57).

Furthermore, at the close of the deposition, the following colloquy took place (at p. 298):

> "MR. RIFKIND: Have you completed the deposition of Mr. Friedman?
>
> "MR. MATTHEWS: Yes."

Despite the stipulation of Ronson's counsel, Ronson's trial attorneys tried unsuccessfully to reopen the Friedman deposition. On the state of the record, the district court's refusal to permit further, cumulative and irrelevant discovery did not represent, as Ronson characterizes it, "an inexplicable change in attitude" (Pet. p. 4) but instead an assertion that Ronson's game of protraction would no longer be tolerated. In view of the fact that the tender offer had already been stayed for months by a preliminary injunction, the district court was entirely correct in requiring Ronson's new lawyers to specify exactly who they wished further to examine, and precisely why, before permitting any more dragnet discovery.

5. What Ronson in truth objects to is not that it did not have adequate discovery or sufficient opportunities to prove its case, but that its discovery and its proof did not disclose the facts as it wished and had previously insinuated them to be. All of Ronson's claims have been heard and reheard below by courts that were intimately familiar with all of the obscurity and elusiveness of its arguments; there is no good reason why they should again be heard in this Court.

CONCLUSION

For the reasons stated above and in the brief in opposition filed by respondents Liquifin *et al.*, we respectfully submit that the petition for a writ of certiorari should be denied.

September 5, 1974.

ROBERT S. RIFKIND,
One Chase Manhattan Plaza,
New York, N. Y. 10005
Attorney for Respondent
Kuhn, Loeb & Co.

PAUL C. SAUNDERS,
CRAVATH, SWAINE & MOORE,
One Chase Manhattan Plaza,
New York, N. Y. 10005
Of Counsel.